

MISC.

Family of dead reporter not convinced of suicide

MARTINSBURG, W.Va. (AP) — A year after Danny Casolaro died, authorities say they are confident the free-lance journalist took his own life amid worries about money and a crippling disease.



Danny Casolaro

Friends who heard Casolaro speak of receiving death threats as he investigated government corruption aren't convinced.

Casolaro, 44, was found dead Aug. 10, 1991, in a hotel room in Martinsburg, about 75 miles from his home in suburban Washington. He was lying in a bathtub, his wrists slashed.

Prosecutor Diana Risavi, who led a five-month investigation, said there was no doubt it was suicide.

She said there was no sign of forced entry or a struggle; a razor blade was in the tub, a half-empty bottle of wine on the bathroom floor, and a note in the room, written by Casolaro, that read: "To my loved ones, please forgive me — most especially my son — and be understanding. God will let me in."

Casolaro had been working for almost a year on a book about allegations by INSLAW Inc., a software company, that the U.S. Department

Friends: Journalist received death threats.

of Justice illegally sold its software to foreign intelligence agencies. The company won a \$7.8 million judgment but lost on appeal.

Several months after his death, Risavi said that Casolaro's book had been rejected by a publisher for the third time, a \$178,790 balloon mortgage payment on his home was due soon and an autopsy showed signs of multiple sclerosis.

Anthony Casolaro, Danny Casolaro's brother, said he has not dismissed the possibility of suicide.

But he said Casolaro's money woes weren't that great, and he wasn't sure if his brother even knew he had MS.

Casolaro, a surgeon from Falls Church, Va., said he is also not satisfied with the suicide theory because his brother reported receiving threatening calls in the weeks before he died.

"When I saw him a few days before he died, he looked tired," Casolaro said. "He said, 'It's hard to sleep when somebody says they're going to kill you if you don't back off.'"

Colleagues said Casolaro's investigation had expanded to the Bank of Credit and Commerce International scandal and allegations the Reagan-Bush campaign in 1980 delayed the

release of the U.S. hostages in Iran until after the election.

In an outline of his book, Casolaro described his findings as "an octopus, created in the 1950s and operating today with impunity because it is intertwined with domestic and foreign intelligence agencies ... a criminal enterprise bent on making money."

Casolaro told friends he was going to West Virginia to get the last bit of evidence he needed for the book.

Risavi said the investigation of Casolaro's death was thorough. But Pat Clawson of Washington, a former investigative reporter for CNN and a friend of Casolaro, labeled it "Mickey Mouse." He said police didn't question Casolaro's colleagues and seemed uninterested in what he was working on.

"I don't rule out suicide, but I find it extremely unlikely," Clawson said.

Authorities initially ruled the death suicide and opened an investigation only after friends and family alerted them to his work.

The family wasn't notified of the death for nearly two days, and the body was embalmed before the family was notified, a violation of state law that Risavi said resulted from a miscommunication.

agenda

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Legal Briefs

Casolaro suit is dismissed

A \$2 MILLION lawsuit filed by the family of free-lance journalist Danny Casolaro against the city of Martinsburg, W. Va., the county commission and a funeral home has been dismissed.

The lawsuit contended that Martinsburg officials were negligent in their delay in notifying the family that Casolaro had been found dead in a hotel room there.

Family members were not notified of the death until after Casolaro had been embalmed.

Casolaro had gone to West Virginia reportedly to meet with a source in his investigation of the Inslaw case. He was found dead in his hotel room, wrists slashed, and officials ruled the death a suicide.

Although there were numerous calls for further investigation — some people believe that Casolaro was murdered, an internal Justice Department investigation of the Inslaw matter found no cause to believe that the death was suspicious (E&P, July 17, p. 9).

Oakland Tribune sues city council for \$5 million

THE OAKLAND (CALIF.) Tribune struck back with a \$5 million lawsuit against the Oakland City Council for its endorsement of a union boycott of the newspaper.

The complaint, filed in federal court, seeks to nullify the council's action and bar council members from urging Oakland readers and advertisers to stop doing business with the Tribune and its four sister dailies in the Alameda Newspaper Group.

In July, the Alameda County AFL-CIO called for a consumer and advertiser boycott of ANG papers to protest the slow pace of bargaining between ANG and the Newspaper Guild (E&P, Aug. 7, p. 11). Negotiations began in 1987. The newspaper company has called the boycott ineffective.

Recently, the council voted unanimously to support the boycott, remove its legal advertising from the Tribune and urge city officials to drop their suit-

scriptions. Mayor Elihu Harris abstained.

The suit charges that the council violated federal laws by interfering in private collective bargaining between labor and management. The complaint also accused council members of denying the Tribune its First Amendment right of free expression. The ANG complaint termed the council's action "an exertion of governmental and public pressure on ANG in an undue and unwarranted attempt to coerce or otherwise improperly influence a resolution of the labor dispute and negotiations."

The U.S. Supreme Court has ruled in several cases that it is unlawful for states or municipalities to interfere in collective-bargaining activity.

"I am confident the court will see this outrageous situation as we do," said J. Allan Meath, ANG publisher and president. "The Oakland City Council violated federal law and the U.S. Constitution. That can't be permitted to happen."

Meath added that the lawsuit is not directed at Oakland residents "but rather those arrogant politicians who are supposed to faithfully represent the people of Oakland."

The publisher said any monetary reward that ANG may win will be returned to the city through local charities.

Lesbian couple says paper discriminated

A LESBIAN COUPLE said the Fargo, N.D., Forum discriminated against them by refusing to print their marriage announcement.

But editor Joe Dill said his paper only runs engagement announcements and pictures of couples who are preparing to be legally married. North Dakota will not issue marriage licenses to homosexual couples.

Tommy Miller, 25, of Fargo, and Cynthia Bullington, 46, of Florida, said they called the Forum to request an announcement of their union ceremony but the request was denied. They then requested a paid announcement and that also was refused.

Miller and Bullington were joined at a news conference by Fargo Mayor Jim Lodgren and members of the local gay

and lesbian community.

Dill said the Forum paid announcement consistency of notoriety. The paper runs not marriages and divor-

N.J. juror case postponed

A JUDGE HAS postponed arguments against a federal law that names of jurors in the press to prevent the press from using them.

U.S. District Judge Robert J. Dill of Newark postponed arguments from Sept. 14 until Oct. 14. Interested parties, including the Newark Ledger, are to be heard.

Politan presided at a trial that resulted in convictions of Eddie Star, founders of a discount-retail store.



New York State Bar Association

1992 John Peter Media Awards (Formerly NYSBA)

The competition recognizes journalistic excellence on the law and the legal profession.

Categories include magazines, radio, commentary and editorial.

Material published in New York State between September 1, 1992 through August 31, 1993 is eligible.

For further information, contact the entry form assistant, Media Awards Committee, (516) 465-5555.

Deadline: entries postmarked November 1, 1993.

Justice Dept. Report Says Journalist's Death Was Suicide

Internal investigation by special counsel discounts theories of foul play in the 1991 death of free-lance reporter Dan Casolaro

by Debra Gersh

AN INTERNAL INVESTIGATION by the Department of Justice has discounted theories of foul play and concluded that free-lance journalist Joseph Daniel Casolaro committed suicide.

The conclusion comes as part of a 267-page report by DoJ Special Counsel Judge Nicholas J. Bua, who was charged with investigating allegations that the DoJ conspired with former United Press International owner Earl W. Brian and others to steal software known as PROMIS from a company called Inslaw.

Bua's report found "no credible evidence" that Brian and DoJ officials conspired to steal the software, nor did the investigation find evidence that DoJ officials improperly influenced Inslaw bankruptcy proceedings.

Casolaro was on the trail of the Inslaw story and had reportedly developed a theory of international conspiracy that involved what he called "The Octopus."

Casolaro had gone to Martinsburg, W.Va., in August 1991, reportedly to meet with an important source for the story when he was found dead in his hotel room bathtub, his wrists slashed. Authorities ruled the death a suicide, but many who knew the journalist point to a number of unanswered questions and still believe it was murder.

Previous investigations by Congress into the Inslaw affair addressed the Casolaro death in their reports, and the House Judiciary Committee went so far as to ask for an independent

counsel to investigate further. That request was rejected by then-Attorney General William P. Barr (E&P, Oct. 24, 1992, p. 23).

During her confirmation hearings and in a subsequent speech at the National Press Club, Attorney General Janet Reno pledged to investigate fully the DoJ's involvement in Inslaw.

Comments and suggestions regarding Bua's report are due at the Justice Department by Aug. 1.

"Casolaro's death has attracted a great deal of attention in the press, at

ical evidence in Casolaro's hotel room "strongly supports the conclusion of the local authorities that the death was a suicide." It said:

- There was no sign of forced entry to the hotel room.
- There was no evidence that a struggle occurred.
- A note was found in Casolaro's room. The note stated: "To my loved ones, Please forgive me — most especially my son — and be understanding. God will let me in."
- There were no indications that

Casolaro was on the trail of the Inslaw story and had reportedly developed a theory of international conspiracy involving what he called "The Octopus."

least in part because of the threat posed whenever a reporter investigating a story is found dead under questionable circumstances," the Bua report noted.

The investigation found "no evidence suggesting that DoJ exerted any influence on the investigation conducted by the local West Virginia authorities concerning Casolaro's death."

DoJ investigators further concluded that because a private citizen's death is outside federal jurisdiction, "we find nothing unusual in the fact that DoJ did not undertake to investigate Casolaro's death."

The report concluded that the phys-

ical evidence found in the hotel room had been disturbed.

• Although there were extensive pools of blood and blood stains throughout the room in which the body was found, there was no evidence, such as footprints, that others were present when Casolaro's wrists were slashed.

Additional physical evidence also corroborates the conclusion of suicide, the report stated, including in the list:

- Handwriting analysis of the suicide note confirmed that it was written by Casolaro.
- Fingerprint analysis of the bathroom and the pad of paper in which

Syndicates/News Services

the suicide note was found revealed the prints of Casolaro and no others except for a single print on the bottom of an ashtray.

- The existence of Casolaro's prints, and the absence of others', supports the conclusion that Casolaro was alone and tend to negate the possibility that someone had "wiped down" the premises.

- Hair and fiber analyses conducted on items from the scene revealed no evidence that others had been present in the hotel room.

- An analysis of the blood stains and related physical evidence conducted by Dr. Henry C. Lee of the Connecticut State Police Forensic Science Laboratory concluded that the evidence was consistent with suicide.

- The autopsy found that the cause of death was the hemorrhage from the multiple wounds to the wrists.

- No evidence from the autopsy or

tion of the crime scene, the hasty embalming of Casolaro's body before an autopsy was performed, the delay in notifying his next-of-kin and allegations that local police did not give enough credence to suspicions of foul play voiced by several people, including Casolaro's family and colleagues.

"The foregoing facts persuaded us that Mr. Casolaro's death was fully and fairly investigated and that the conclusion of the local authorities that his death was a suicide was amply supported by the facts," the DoJ report said.

A prepared statement from Inslaw owners William and Nancy Hamilton was highly critical of the report, particularly the fact that it was prepared in "secret" and they had no opportunity to inspect or challenge the evidence.

The Hamiltons cited two examples of the report's lack of credibility, one of which was the Casolaro incident.

"The special counsel's investigation

official documents backing up claims that source had made to Casolaro in another West Virginia meeting that occurred a few days earlier. Casolaro had also planned to show some of his own sensitive Inslaw documents to the relative that night.

"These leads do not prove that Casolaro was murdered or that PROMIS has been distributed to foreign governments, but the failure to pursue such leads gives rise to obvious questions about the thoroughness and reliability of the special counsel's report." ■EOP

Editor-publisher starts new firm

QUAKERTOWN FREE PRESS owner, editor and publisher Charles M. "Ty" Meredith IV joined with commercial printer Robert Cope Jr. to form Free Press Printing & Graphics.

Its modern facilities are located in the Free Press Building in Quakertown, Pa., where it offers Delaware Valley businesses and individuals extensive printing and design services.

Meredith, president of the new enterprise, is the fourth-generation owner of the Free Press and Franklin & Meredith Publishing. Like his father, Cope, who is vice president, has owned and operated a commercial printing firm in the area.

"Had the special counsel interviewed Casolaro's confidants and associates, he would have learned that Casolaro claimed to have obtained, from sources in the National Security Agency (NSA) and the Internal Revenue Service (IRS) sensitive documents on the sales of PROMIS to foreign governments . . ."

subsequent tests of blood and urine revealed any evidence that Casolaro was unconscious or debilitated when his wrists were cut.

- The autopsy revealed no contusions, lacerations or trauma to the body of the kind one might expect had Casolaro been involved in a struggle.

The Bua investigation also cited police interviews with those familiar with Casolaro's activities just before his death and noted that they "failed to develop any substantial evidence any other person had the means or opportunity to murder Casolaro."

In addition, Casolaro's financial situation — he had a balloon mortgage payment due, his prospective publisher would not give him an advance on the book he proposed about "The Octopus" and he was dependent on his family for support — was put forward by Bua as "ample reason to believe Casolaro had a motive to commit suicide."

The special counsel also dispelled questions about possible contamina-

tion of the crime scene, the hasty embalming of Casolaro's body before an autopsy was performed, the delay in notifying his next-of-kin and allegations that local police did not give enough credence to suspicions of foul play voiced by several people, including Casolaro's family and colleagues.

"Had the special counsel interviewed Casolaro's confidants and associates, he would have learned that Casolaro claimed to have obtained from sources in the National Security Agency (NSA) and the Internal Revenue Service (IRS) sensitive documents on the sales of PROMIS to foreign governments and on the money trail through the Cayman Islands and Switzerland of the proceeds from at least one of the sales.

"Moreover, the special counsel would have learned that Casolaro was planning to meet in Martinsburg, W.Va., the night before he died with a relative of a key Justice Department figure in the Inslaw case," the Inslaw statement continued.

"Casolaro expected to obtain from the relative of the Justice Department

No workers' comp for Neb. carriers

THE NEBRASKA LEGISLATURE voted 32-10 not to extend workers' compensation benefits to newspaper carriers. The measure was attached to a rewrite of the state workers' compensation laws.

The Nebraska Press Association opposed the measure put forth by state Sen. Tim Hall, who cited a March Workers' Compensation Court ruling that a carrier who was hit by a car qualified for benefits.

In that case, Jennifer Larson, then 12, was delivering the *Fremont Tribune* by bicycle in February 1991 when she collided with a car.

The court ruled she was "totally disabled" and that paper carriers were employees, not independent contractors.

State Sen. David Landis said lawmakers should await the state Supreme Court's decision in the case. —AP

Syndicates/News Services

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failed to contact or interview confidants and associates of Casolaro to find out if any of them could shed light on whom Casolaro was seeing in Martinsburg," the statement charged.

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Justice—Key to Intelligence Reform

The Reno Era Begins

"Officers of the intelligence system cannot be prosecuted in court—a non-constitutional privileged class mocking the principle of equality before the law..."

Intelligence

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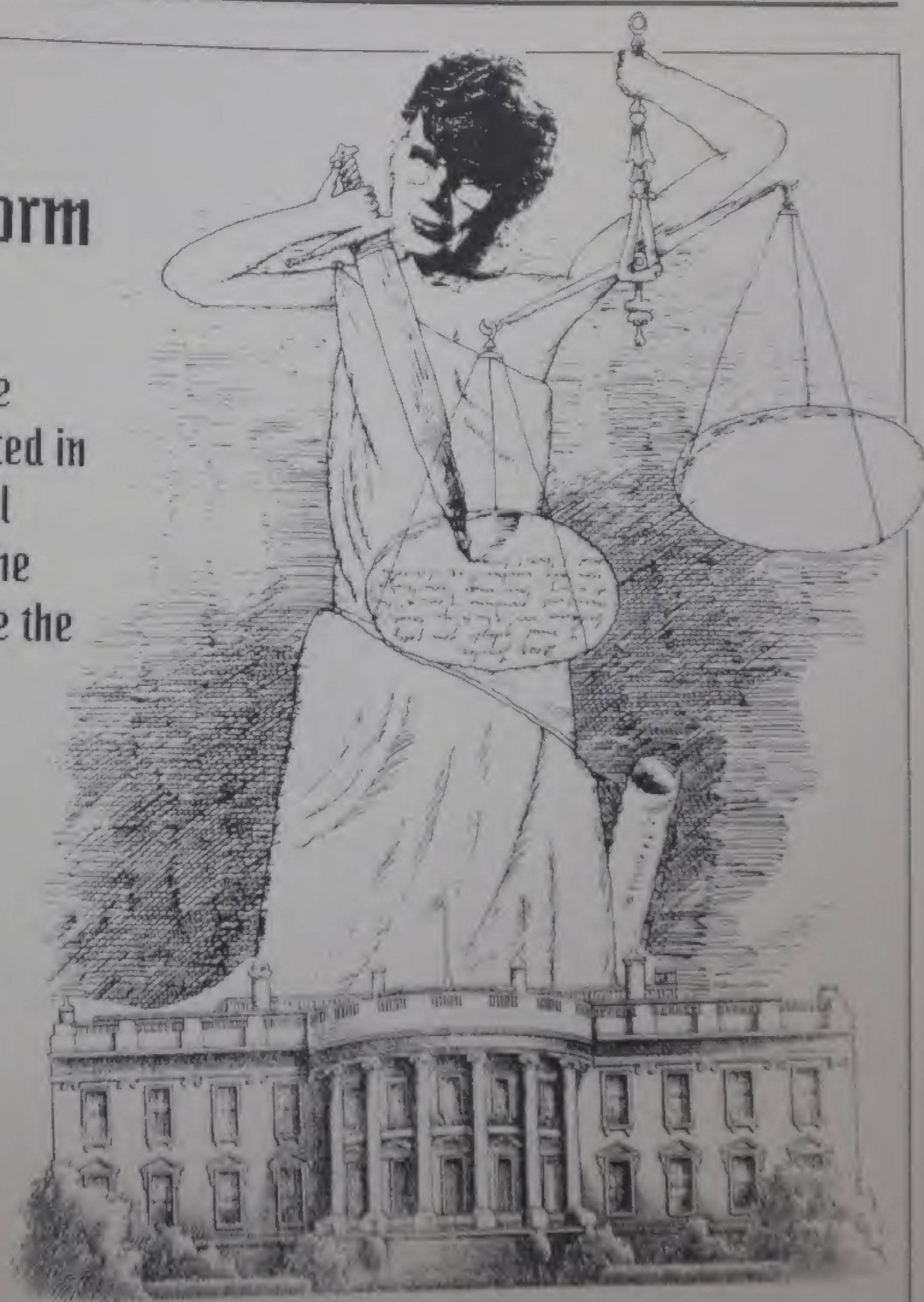
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Central America

Revisited

INSLAW Strikes Back

Economic Intelligence Update



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Justice—Key to Intelligence Reform

The Reno Era Begins

Increasingly, as its readers know, UNCLASSIFIED has come to believe that there can be no meaningful reform of the US intelligence system without drastic change in the Department of Justice (DOJ). During the Cold War, the position of DOJ under successive attorneys general has been that invocation of national security by the president essentially provides him constitutional *carte blanche* and exempts members of the intelligence system from prosecution for violations of United States law, especially when committed in the conduct of covert operations.

The point was made by Iran-contra Independent Counsel Lawrence Walsh in his December 1989 interim report to Congress. He declared that, in effect, officers of the intelligence system could not be prosecuted in court. A non-constitutional privileged class, mocking the principle of equality before the law, had been created. More serious, perhaps, in terms of basic citizen rights and liberties, has been the use of the same claims of national security to disregard the Bill of Rights and to deny to private individuals the ability to sue and gain compensation for torts committed against them by the national security agencies, their officers, or their private corporate manifestations.

Not surprisingly, the agencies of the intelligence system, and the office of the president, have abused the privilege. It is, after all, the nature of extra-legal privilege that it will be abused, a corollary of Lord Acton's well-worn dictum that power tends to corrupt. Increasingly, the federal judiciary—its ranks filled with those, like former CIA general counsel Stanley Sporkin, drawn



from the national security establishment—has come to treat the privilege as constitutionally acceptable, at least in the Cold War context, and the abuses of it, if not absolutely lawful, as either beyond the ken of courts or infinitely forgivable on grounds of national security.

In its issue of October-November 1992 (Vol. IV, No. 5), UNCLASSIFIED wondered how President Clinton, the first post-Cold War president, would deal with the situation. Would he seize the opportunity, in the aftermath of Iraqgate and the rekindling of the embers of Iran-contra by Judge Walsh that had so seriously tarnished Bush's reputation and perhaps cost him the election, to pursue reform? Or would he find it expedient to leave the current system alone?

Speculating further on the role of DOJ, we argued that the key to the Clinton administration intentions would be signalled by its attitude toward Walsh's office, its handling of Iraqgate's Banca Nazionale de Lavoro (BNL) case in the Atlanta federal district court of Judge Marvin Shoob and its response to the INSLAW affair. While there was, we thought, some significant political advantage for the incoming administration vigorously to pursue these cases, our reluctant conclusion was that for both political

(promises by outgoing President George Bush to refrain from attacking Clinton's programs) and institutional (protection of the inflated powers of the presidency combined with fear of rousing the enmity of entrenched elements in the national security establishment, particularly in DOJ) reasons, the decision would be to sweep these matters under the rug.

The (to UNCLASSIFIED) unexpected decision of outgoing President George Bush to pardon the Iran-contra defendants (see UNCLASSIFIED Vol. IV, No. 6, January 1993, "Committing the Unpardonable") pre-empted Clinton on Iran-contra and Walsh's prosecutions. Then Clinton's lengthy delay in finding an attorney general prevented any administration action on the other two key cases. Finally, when the choice was made of the Dade County (Miami, Florida) district attorney Janet Reno, DOJ and national attention was riveted first on the standoff in Waco, Texas, between federal law enforcement officials and the Branch Davidian Church—which ended in the FBI's massacre of the eighty or so men, women and children in the Church—and then by the bombing of the World Trade Center in Manhattan.

Reno Takes Charge, Responsibility and Bows

Sometimes a disastrous first step for a leader turns into an advantage. One thinks of John Kennedy and the Bay of Pigs or, perhaps, Ronald Reagan sending 250 odd Marines to their futile deaths in Lebanon. Both presidents publically accepted full responsibility for the catastrophes, and, paradoxically, were applauded for their courage in doing so.



So with new Attorney General Reno after her order to the FBI to storm the Branch Dravidian compound turned into a nightmarish massacre. The decision had been hers, she announced. It had been her mistake based on her own flawed estimate of the situation. As attorney general she assumed full responsibility. Instantly, Clinton's third

choice became a first magnitude star—she had taken responsibility! She had not pleaded being new on the job. She had not denounced subordinates who had mis-

judged the situation. She simply took the responsibility. That there is no adverse consequence for admitting error—no penance, no punishment—does not diminish the fact that the admission, to the major press, at least, showed Reno had character.

Time Magazine, in its adulatory cover story (July 12, 1993) quotes "an observer from Capitol Hill" as saying that "Reno has established a certain air of integrity.... You cannot diminish the value of having the head of the Justice Department being recognized nationally for strength, integrity and honesty. That is certainly something that has not happened at Justice for the past 12 years."

UNCLASSIFIED agrees with the statement, but it is both astonishing and sad when a national news magazine reports matter-of-factly and does not attempt to dispute the assertion that the Attorneys General of the United States for the past dozen years have been weak, corrupt and dishonest. *Time* also quotes an unnamed "veteran FBI agent" declaring that "She stood up and took a bullet for us."

And it is here that a question arises. Will Reno use her public credit to begin the necessary reform of DOJ or, as apparently in the Waco affair and the other deadly FBI siege at the northern Idaho cabin of Randy Weaver, to defend the institution as it is?

A Look At The Record

When Reno was nominated, William Jakobi of Miami wrote UNCLASSIFIED to point out that in her more than a dozen years as district attorney in Dade County she had rarely, if ever, investigated or prosecuted the flagrant criminal activities of Cuban and anti-Sandinista exile groups operating out of Miami. Former Dade County federal public defender John Mattes confirms this. Readers will recall that the El Salvador United Nations Peace Commission Report harshly criticized United States law enforcement for its tolerance of death squad activities in Miami. Anti-Castro Cuban-American groups who criminally assaulted individuals and organizations in Miami perceived as insufficiently sympathetic to their point of view seemed immune from action by Dade County authorities. Most recently, press reports on the resumption of armed contra insurgency in Nicaragua confirm what UNCLASSIFIED had been hearing from Nicaraguan sources for the past two years. Wealthy Nicaraguan exiles in Miami, unhappy with the conciliatory policies of President Violeta Chamorro in their country, have been providing arms and money for the ex-contras.

Reno's apparent lack of concern while the head of law enforcement in Dade County may be attributed to the fact that these matters were essentially federal in nature, outside her jurisdiction. It may be also that no one can hold elective office in Dade who is perceived as hostile by the powerful right wing Cuban-American elements that dominate the county's politics. Regardless, a warning flag was raised. As with Clinton himself and the charges of covert operations at Mena while he was governor of Arkansas, it has to be assumed that Ms. Reno knew of ongoing covert actions in Miami and related criminal activity, including narcotics and neither said or did anything. The question is, does she accept this as normal and legal? As the nation's chief law enforcement officer will she con-

tinue the practice of her predecessors in having DOJ participate actively in covert actions, through the FBI and other DOJ elements, and in providing legal cover for them in the courts even when they involve criminal activity or violation of citizens' civil and legal rights?

To Date

So far, the signs are not good. At best they are mixed. Reno has supported publically the proposed new independent counsel statute in the Ethics in Government Act. The statute, under which, for example, Lawrence Walsh has operated, expired last December 15. However, it seems clear that the renewed statute is not a high priority of the Clinton administration.

With regard to Walsh himself, Reno has been silent. On August 5, Walsh submitted his final report to a three judge panel headed by District of Columbia Appeals Court Judge David Sentelle. The report, which, unhappily, is in both an unclassified and classified version, will not be issued publically or commented on by Walsh's office until October 4, when those named in it will have had a chance to read it and respond. To UNCLASSIFIED it is significant that Attorney General Reno had no comment, no words of thanks for Walsh.

Atlanta Is Burning

On the BNL case, the record is unequivocally bad. On August 23, deputy assistant attorney general John Hogan, formerly Reno's chief prosecutor in Dade County, appeared in the Atlanta federal courtroom of Judge Marvin H. Shoob. The occasion was the sentencing of subordinate officers in the Atlanta branch of BNL, who had pleaded guilty to participating in a fraud on the parent bank in Rome while illegally using US Government-guaranteed loans to Iraq to finance arms purchases by that country prior to its invasion of Kuwait. Shoob sentenced the defen-

dants to probation, declaring them merely "pawns and bitplayers in a ...wide-ranging conspiracy."

The branch manager, Christopher Drogoul, had changed his plea to not guilty and was to go on trial in mid-September. On September 2, however, in return for the dropping of 67 of the charges against him, he pleaded guilty to two counts of lying to bank regulators and one of wire fraud. Originally, Drogoul had said he would defend himself by demonstrating that he had been only following orders in a Bush administration conspiracy to arm Iraq. However, after Judge Shoob, at DOJ request, recused himself from acting as trial judge, the new judge, Ernest G. Tidwell, ruled in advance that he would not allow that defense nor any attempt to demonstrate that BNL's Rome headquarters or the Italian Government knew or approved of the Atlanta branch transactions.

The *New York Times* (September 3, 1993, A10) reported DOJ spokesman Carl Stern as saying Reno had personally approved the deal. The article further stated that Hogan's courtroom statement on August 30, "signaled that the Clinton Administration does not believe there is any need for a special prosecutor." Indeed, Drogoul's lawyer, Robert M. Simel, told UNCLASSIFIED Hogan stated flatly that there will be no independent counsel; he considers himself the independent counsel.

Hogan had announced that DOJ would continue prosecution on the same theory advanced by Reno's predecessor, William Barr, that neither the Rome headquarters nor the Italian government knew of Drogoul's actions. The underlying context, of course, is that there was no US covert provisioning of Iraq's Saddam Hussein in what turned out to be a mistaken attempt to make him the US's major regional Arab ally against the fundamentalism of Iran. (UNCLASSIFIED readers are familiar with the exposure of this by Congressman Henry B. Gonzalez (D-TX), chairman of the House Banking, Currency and Urban Affairs Committee and the

subsequent contre-temps with the Bush administration as represented by then Attorney General William Barr. See, e.g., Vol. IV, No. 3, "Iraqgate—Another Failed Covert Operation?"; Vol. IV, No. 4, "Mother of All Secrecy Battles: Politicization of Intelligence Turns Iraqgate into Gatesgate"; and Vol. V, No. 1, "National Security and Law Enforcement").

"If Judge Lacey had investigated the Teapot Dome scandal, he would have given out a medal instead of a jail sentence."

Federal District Judge Marvin H. Shoob

Judge Shoob recused himself from Drogoul's trial at DOJ request, because after four years of presiding over the matter he has openly declared his disbelief in the presentations DOJ and CIA have made to him. In fact, he has used the word "lied." He was openly skeptical of Hogan's claim that the Clinton administration had studied the matter and determined that there had been no conspiracy by President Bush and his senior aides to conceal their plan to arm Iraq secretly. Said Shoob, such a decision was only possible in "never-never land." When another DOJ prosecutor, Randy Chartash, backed up Hogan by referring to the investigation of Barr-appointed special prosecutor, Frederick B. Lacey, Shoob exploded. He said, "If Judge Lacey had investigated the Teapot Dome scandal, he would have given out a medal instead of a jail sentence." (*New York Times*, August 24, 1993, A10, "Judge Scoffs at Defense of Bush on Iraq.") Shoob confirmed the accuracy of the *Times* account of his statements in a telephone interview with UNCLASSIFIED on August 27.)

Hogan spoke with UNCLASSIFIED on August 27 and also confirmed the *Times* report insofar as it declared

DOJ's intention to prosecute Drogoul in accordance with the theory that he acted without the knowledge of the Rome headquarters of BNL and further that there had been no conspiracy in the Bush administration. However, he indicated that it was most unlikely Ms. Reno would accede to any request for an independent counsel in the case, should the statute be renewed and should Congress again call for one.

Stay Tuned

Simels says that from the beginning DOJ's priority has been to avoid letting the trial become a public forum for examination of the Bush administration's role. He believes that the "national intelligence agencies" played a significant role in the coverup effort. He finds DOJ's conduct "outrageous" but "nothing new." The one opening left, though, will be Drogoul's sentencing hearing. Simels tells UNCLASSIFIED that Judge Tidwell's gag orders will not apply, and he intends to use the opportunity to expose what lay behind the actions of the Atlanta BNL branch.

On September 9, columnist William Safire waded in again. ("Is the Fix In?", *New York Times*, A25). He speculates that the quid pro quo for Bush's pledge not to criticize Clinton for a year is the quashing of revelations about Iraqgate.

Without prejudging, it does seem odd that Reno (and the Clinton administration) would proceed in this manner when both the trial judge and the leaders of the House of Representatives Banking, Commerce, and Judiciary Committees all have urged appointment of an independent counsel. The January 1993 staff report of the Senate Select Committee on Intelligence (SSCI), although it concluded that there had been no collusion between the CIA and DOJ to suppress evidence in the case, presented much evidence to the contrary.

In UNCLASSIFIED's view, there should be an independent counsel to investigate this affair fully. If the Clinton administration, supported by

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Attorney General Reno, refuses to accept a congressional request for one under a renewed statute, it will be a sign that DOJ will continue to play its familiar role as participant in and coverup for illegal covert activities conducted by the executive branch. Indeed, one discouraged congressional staff investigator working on BNL told UNCLASSIFIED that the same crowd, with the same attitudes and agenda, remained in charge at DOJ and the CIA. With regard to the latter, he said that the oversight committees, except for watching the budget more closely, were as disinterested as ever in investigating intelligence system illegal actions. (For biting comment on Reno and the BNL developments, see Russell Baker, "Frequent Liar Program," *New York Times*, August 31, 1993, A17).

INSLAW

The INSLAW case, the latest developments in which are discussed elsewhere in this issue, is another touchstone. INSLAW president William Hamilton and his wife, Nancy, along with their lawyer, former attorney general Elliot Richardson, met with Reno in June. According to Hamilton, the meeting was brief and brusque. Reno said she sees no need for an independent counsel. Hamilton has the impression, supported, he tells UNCLASSIFIED, by accounts from sources inside the administration, that the report of Barr-appointed special prosecutor Nicholas J. Bua, denying all DOJ wrongdoing or liability, will, like the Lacey report on BNL, be DOJ's position.

Once again, the real test will come later this year when (and if) the independent counsel statute is renewed. Already, again according to Hamilton's statement to UNCLASSIFIED, Senators Dennis DeConcini (D-AZ), chairman of the Senate Select Committee on Intelligence, and Orrin Hatch (R-UT), ranking minority member on the Senate Judiciary Committee, have told Reno that the Bua Report is a whitewash and that an independent



council is necessary. Jack Brooks has put the same sentiments in writing, and in a personal meeting supposedly told Reno that DOJ is badly in need of a complete shakeup. Should Brooks's Judiciary Committee repeat its request for an independent counsel and should Reno refuse, it will be abundantly clear that, at least where DOJ and the national security system meet, the Clinton administration means more of the same. In addition, since the essence of the INSLAW case is the charge of endemic and deeprooted corruption in DOJ and other national security agencies, a refusal to pursue the case would be evidence that Reno and the administration lack the will to clean house.

Unleashing the FBI

Another intelligence-related DOJ matter that should be of concern to those seeking to reduce the Cold War reach of national security agencies is the new power to gain access to citizens' credit information proposed for the FBI in the Senate version of the 1994 Intelligence Authorization (analyzed elsewhere in this issue). The amendment to the Fair Credit Reporting Act sought by the Clinton administration allows the FBI Director or his designee to obtain credit information without a court order by issuing a "national security letter." Likewise, the administration is seeking to require that all private electronic communications systems be coded in a way that allows government to monitor them, the so-called "split key cryptographic system" developed by the National Security Agency (NSA).

By the same token, there is no sign that Attorney General Reno (or anyone else in the administration) is coming forward to support HR 50, the resolution sponsored by Don Edwards (D-CA) for several years now establishing statutory standards that the FBI must adhere to before initiating a national security investigation of any individual or group. Even the recent revelation of FBI complicity with rogue San Francisco police intelligence gathering for the Anti-Defamation League (ADL)—a major scandal—has not produced any public reaction, let alone condemnation, from the Attorney General's office. (On these issues, see Abdeen Jabara, "Anti-Defamation League: Civil Rights and Wrongs," *Covert Action Information Bulletin*, Summer 1993, and National Committee Against Repressive Legislation, "The Right To Know & The Freedom To Act," July 1993. The *Covert Action* article has the complete list of all the individuals and organizations spied on by San Francisco police agents for the ADL). Whatever the real reasons behind William Sessions' dismissal as FBI director and his replacement by Judge Louis Freeh, many in Washington see Sessions' downfall as the result of his attempts to alter even minimally the traditional Cold War culture of the bureau. Freeh, himself a former special agent, is hailed by the old guard as one of their own. Once again, hardly a harbinger of positive change. (See, *New York Times*, "Week In Review," September 5, 1993, E7, referring to Freeh's "coronation-like swearing-in, commented: "Rank-and-file agents, who chafed under Mr. Sessions, welcomed Mr. Freeh as a leader who knows the work and is steeped in the F.B.I.'s paramilitary culture.")

Terror and the First Amendment

Moreover, the DOJ, in deciding to prosecute the World Trade Center bombers and their alleged spiritual leader, Sheikh Omar Abdel Rahman, has adopted a seditious conspiracy ap-

"[T]he conspiracy charges against the sheik were brought under a rarely used sedition law that measures guilt by the plotting a terrorist does, not the commission of any overtly illegal act. Because the law does not require the Government to prove that the defendants committed any overt acts to further their conspiracy, or even that they know of the acts the others committed, some legal experts say the law comes close to threatening freedom of speech and belief." From NYT "A Wider Net."

proach which many lawyers believe violates free speech and association constitutional guarantees. This, clearly, was Reno's decision and seems to fit in nicely with the national security establishment tendency to substitute fear of terrorism for the now defunct red threat as justification for continuing

and expanding its activities. ("A Wider Net: American Law Tackles Terrorism," *New York Times*, Week In Review, August 29, 1993, 1).

Verdict

It may be unfair to judge Attorney General Janet Reno on the basis of her few months in office. However, her claim to fame and popularity is that she accepts responsibility for what goes on in her department. On that basis, then, UNCLASSIFIED is gravely disappointed.

With regard to Independent Counsel Walsh and his final report, BNL, and even BCCI, one could argue that it is better to put these matters behind rather than risk political turmoil over what is now history. We don't agree, but the argument can be made.

However, INSLAW simply has to be resolved, if only as a matter of justice for the Hamiltons, if, in fact, they have been robbed of their property—something two federal courts have held to be true and which the House Judiciary Committee strongly suspects. Moreover, if the underlying charges in

INSLAW (as well as the other cases reviewed here) of massive corruption throughout DOJ and other agencies are accurate, then it is even more necessary to clean up the mess, whatever the political and institutional price paid. As the INSLAW response—whose principal author is former Attorney General Elliot Richardson—to the Bug Report, comments with regard to the obvious intimidation of one witness, "something [is]...terribly wrong at the Justice Department." That DOJ under Reno has not addressed the situation directly and fairly by calling publically for an independent counsel investigation is a mark against her.

Finally, by failing to announce a program for pruning away Cold War excrescences, and, in fact, apparently joining in the effort to continue and even expand DOJ's "national security" missions, trading shamelessly on terrorist hysteria, Reno, and her boss in the White House, have so far badly disappointed those Americans who had hoped that the end of the Cold War and the ouster of those, like President Bush, whose careers had been made in it meant positive change.

Intelligence Authorization 1994

HPSCI Update

In its last issue UNCLASSIFIED discussed the House Permanent Select Committee on Intelligence (HPSCI) version of the fiscal year 1994 intelligence authorization. This subsequently passed in the House of Representatives by a voice vote on August 4.

Despite the fact that for the past two years the intelligence authorization has contained a sense of the Congress resolution that the whole amount appropriated for intelligence be made public in the legislation, an amendment to do that was defeated by a 264 to 169 vote. Ironically, this was reported in a *Washington Post* story headlined, "House

Votes \$28 Billion For Intelligence Work." The account noted that the total was "more than \$1 billion less than President Clinton sought...." (WP, August 5, 1993, A9).

Having made themselves look ridiculous by voting to keep officially secret from the taxpayers what is now openly published in the press, the legislators compounded their folly by voting 341 to 86 for a secrecy oath amendment offered by Porter Goss (R-FL). The amendment prohibits executive agencies from providing classified material to any member of Congress who does not sign and have published in the *Congressional Record* the following oath: "I do solemnly swear that I

will not directly or indirectly disclose to any unauthorized person any classified information received from any department of the Government funded in the Intelligence Authorization Act for Fiscal Year 1994 in the course of my duties as a Member of Congress...." Goss, a former CIA officer, denied that his amendment was aimed at any particular member, but it is likely that he had his sights trained on the redoubtable Henry B. Gonzalez.

Unless the Senate rescues them by defeating the amendment in conference, the members of the House have taken a long step back toward the McCarthy era in sacrificing themselves before the idol of national security. In

Porter Goss Amendment

"I do solemnly swear that I will not directly or indirectly disclose to any unauthorized person any classified information received from any department of the Government funded in the Intelligence Authorization Act for Fiscal Year 1994 in the course of my duties as a Member of Congress...."

practical terms, should the Goss amendment stand, Congress has given the agencies of the intelligence system (the so-called "Intelligence Community") one more way to deny information to the American people. UNCLASSIFIED is grateful, though, that the House did not adopt HR 380, proposed last January by Robert Solomon (R-NY). This would have required intelligence committee members and their staffs to submit to random polygraph testing to prevent unauthorized disclosure.

DeConcini's First Bill—S1301

S.1301 is the first intelligence authorization legislation drafted under the chairmanship of Senator Dennis DeConcini (D-AZ), and merits close analysis to see what, if any, changes in direction or emphasis are visible after the departure of longtime SSCI chairman David Boren. Boren was a staunch defender of the CIA and a particular partisan of its controversial director, Robert Gates. DeConcini seems more skeptical, less of a true believer.

On reading the report accompanying the bill (103d Congress, 1st session, Senate, Report 103-115, "Authorizing Appropriations for Fiscal Year 1994 for Intelligence Activities of the U.S. Government...") one is struck by

its defensive and almost diffident tone. The section headed "Funding Intelligence At The End Of The Cold War" (pp.3-8) begins by stating that "Many Americans continue to perceive the CIA and other intelligence agencies as creatures of the Cold War, established to keep track of the Soviet Union and counter the spread of Communism around the world....Now, with the end of the Cold War and demise of the Soviet Union and Warsaw Pact, the military threat to the United States has substantially diminished, and information regarding the former Soviet Union is often accessible through a variety of overt means. As a consequence, many believe the United States can substantially reduce, or do without, its intelligence capabilities."

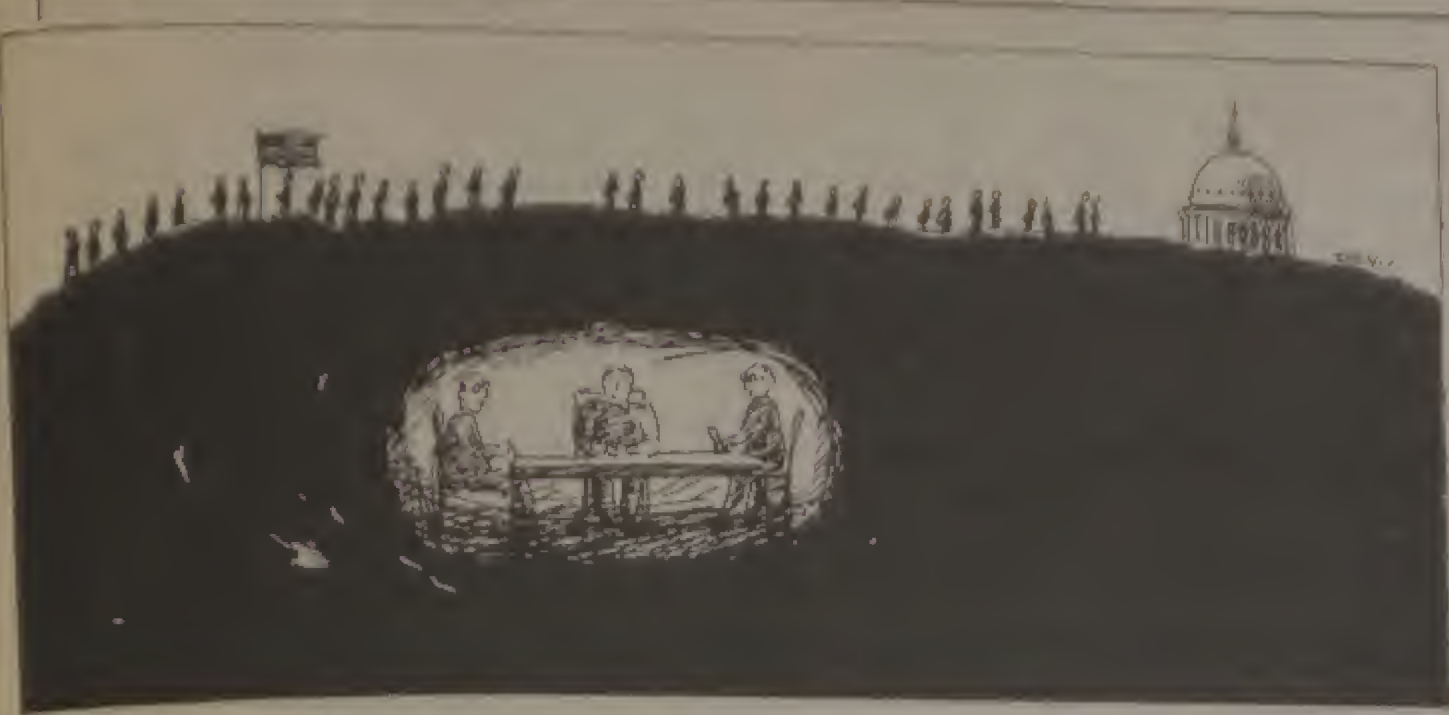
Acknowledging that Congress agrees the threat has diminished and has, in consequence, reduced intelligence funding for the past three years, with this bill making another "substantial cut in the funding requested by the Administration," the Report notes that the cut is not as deep as last year's. The intention is to preserve an intelligence capability "adequate to support the national security needs of the country during the next fiscal year and the years beyond." It warns that "...despite the end of the Cold War, those needs continue to be substantial."

Not A Self-Evident Proposition

Thereafter, the Report earnestly discusses the various roles the "Intelligence Community" must fulfill. What is striking in this discussion is that "intelligence" seems to encompass all possible information that might be useful to policymakers and that an amorphous "Intelligence Community," somehow distinct from the rest of government, must be maintained to provide that information. This is, even on the basis of the Report's own less than coherent discussion, far from a self-evident proposition.

For example, in the area of proliferation of nuclear weapons and other weapons of mass destruction, the Report (4) notes that it is the "Intelligence Community" that monitors and tracks location and development of mass destruction weapons and their delivery systems for the benefit of US diplomats and international bodies. The same "Community" also, the Report alleges, is "virtually the sole means of verifying" the diplomatic agreements governing these matters and "plays a key role" advising those who negotiate them.

While the capacity for monitoring and tracking may, to a large extent and as a result of Cold War evolution, be possessed by one or another body of the "Intelligence Community," it is not clear why, under current circumstances, the agencies directly responsible for negotiating agreements and monitoring the situation do not themselves have the capacity for gathering and assessing the information necessary to do so. Even allowing that the current division of labor is practical, it would seem reasonable to consider transferring the monitoring capabilities to the responsible agencies. This is particularly true if, in fact, the intelligence agencies are, as the Report states, playing an important advisory role for those negotiating diplomatic agreements on non-proliferation and control of weapons of mass destruction. The intelligence function is, or



We do not want little sub-governments accountable neither to the Congress nor to the public.

Henry Mitchell, *The Washington Post*, B2, November 20, 1987

BY SUSAN DAVIS FOR THE WASHINGTON POST

should be, purely informational, not advisory.

Military Intelligence

The Report's rationale for the relationship between the "Community" and the military is also curious. The Report says (5): "A large part of the Intelligence Community's efforts are devoted to support of U.S. military forces, which, with the end of the super-power conflict, must prepare for a variety of new contingencies." The discussion details all the various military intelligence requirements being met by "the Community." Not only is intelligence support being given to the US armed forces, but to UN peacekeeping troops and, interestingly, the "...research, development and acquisition of military weapons and equipment by the Department of Defense. Even in an era of military downsizing, the Intelligence Community continues to provide literally thousands of defense planners and contractors concerning foreign military capabilities which must be taken into account as they assess US military needs of the future and build the capabilities to match them."

This reads more like advertising copy than analysis. Moreover, since all the tasks mentioned are traditionally those of military intelligence, one wonders at the necessity of folding them

into the mystical "Community." What seems to be involved here is resistance by the existing intelligence system to the growing effort, noted many times by UNCLASSIFIED, of the military to regain the control of intelligence it ceded to, or was forced to share with, the new CIA after World War II. SSCI, which (pp.12-13) scolds the Director of the Defense Intelligence Agency (DIA) for arrogating to himself the title of Director of Military Intelligence, seems to realize that the Pentagon is trying to secede from the "Community." The discussion about this in the Report simply brings into higher relief the question of the necessity of an "Intelligence Community" under direction of the head of the CIA in his or her capacity as Director of Central Intelligence (DCI) instead of having the specialized intelligence functions assigned directly to the agency involved.

National Economic Security

This same question can be inferred from the discussion of other "Intelligence Community" activities. On page 6, we read: "The end of the Cold War has also seen increasing recognition of the importance of a strong domestic economy as an element of U.S. national security." The Report goes on to declare, while warning of "clear pit-

falls to be avoided in this area," that the "Community" is being called on by the Departments of State, Commerce and the Treasury, those agencies "charged with promoting U.S. competitiveness abroad" to be warned of cases where there is "a need to 'keep the playing field level' for U.S. business interests abroad." Likewise, it says, the FBI and other elements of the "Intelligence Community" tell firms within the US when they are the objects of "intelligence attack" (whatever that is).

This passage, which seems, even while expressing doubt, to accept economic intelligence as a legitimate task for the "Community," does not consider that State, Commerce and Treasury have excellent information gathering capacity, as well as responsibility, in providing publically available economic data. The intelligence elements of State and Treasury, for that matter, are included in the "Community," and those elements are funded through the intelligence authorization. There seems no thought given to increasing their own capabilities in their areas of competence and responsibility. (Indeed, there seems to have been no thought given to the consequences of expanding national security to include the health of the domestic economy nor to what is meant by "the competitive position of U.S. industry abroad." For more on this, see "Economic Intelligence Update II" elsewhere in this issue.)

On page 12, the Report itself provides a graphic example of the unwisdom of involving an intelligence agency, as such, in the economic process. Under the Foreign Bank Supervision Enhancement Act of 1991, the Federal Reserve Board must approve applications by foreign banks to establish branches or offices in the United States. In complying with the Act, the Board requests background checks on applicants. According to the Report, the Board is complaining of inability to process applications because of slow responses, especially from the CIA. Over 20 applications have been pend-

ing for over two years because the CIA has not responded, SSCI is so concerned for the economic harm caused by this that it has required the DCI to investigate and report back to the Committee by February 1, 1994.

Drugs & Thugs Revisited

In dealing with the question of international terrorism and narcotics, the Report claims that the "Intelligence Community" plays "important, though largely unseen, roles." Interestingly, although making the debatable claim that the World Trade Center bombing and the downing of PanAm 103 affairs represent triumphs of US intelligence in protecting American citizens and property, the emphasis is on the aid which the "Community" gives to other countries in dealing with terrorists and drug traffickers. One reason that this is a "largely unseen" role, claims the Report, is that foreign governments prefer not to acknowledge the US assistance. (UNCLASSIFIED cannot resist noting here that foreign governments sometimes actively resist the "assistance." Last year, Peruvian Air Force planes shot up a US Air Force plane "assisting" in anti-drug operations, killing one US crew member. The abduction from Mexican territory of Mexican doctor Luis Alvarez Mechaine by US DEA agents "assisting" in anti-drug operations caused a serious international incident).

Damning With Faint Praise

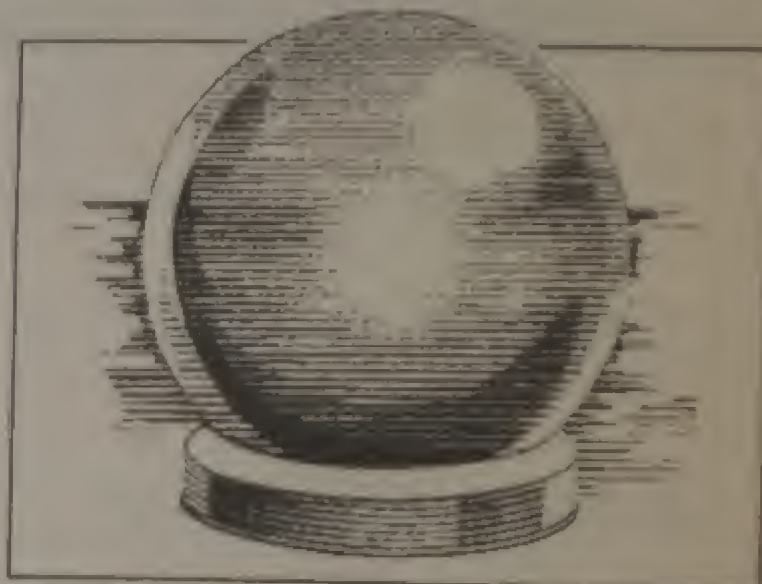
The final section in this defense of the "Community" is very strange. If anything, it expresses confusion and doubt about the value of the whole intelligence enterprise. DeConcini and company seem to be asking, "What is the reason for all this?" and not being able to come up with much of an answer. The three paragraphs in which the Report (7) discusses the core rationale for foreign intelligence need to be quoted in full:

"Finally, the Committee acknowledges the continuing need of the President and other key policymakers for non-publicly available information regarding the intentions and capabilities of other governments. To be sure, the world political environment has become far more open and foreign leaders more accessible since the end of the Cold War. Communications between the United States and other governments, aided by the explosion of technology in recent years have become more voluminous, direct, and timely. News media instantly flash images and commentary concerning world events to all points of the globe.

"Still, the Government needs a capability to assess what our leaders are seeing and hearing from other governments. Are events as they seem? Can the President rely upon what other governments are saying privately or what they state publicly? How firm is their position? What is their reaction likely to be if the United States takes a particular action and not another? Are U.S. interests threatened and, if so, how?

"The Intelligence Community, by attempting to gather and analyze information concerning the actions or attitudes of other governments which is not publicly available, is often able to provide unique insights to the President and other policymakers. On occasion, this information has provided a reliable basis for a significant U.S. diplomatic or military initiative which would not have otherwise been attempted. This is not to say that the contribution made by U.S. intelligence has always been unique or reliable or actionable. The Committee simply notes that at times the contribution of intelligence has been invaluable."

UNCLASSIFIED simply has to ask, what kind of ringing defense is this? The "Intelligence Community," we are told, *attempts* to gather and analyze information. As a result, it "is often able to provide *unique* (a beautifully ambiguous word—UNCL) insights to the President...." And, "...on occasion, this information has provided a reliable basis for a significant U.S. diplomatic or military initiative which would not have otherwise been attempted."



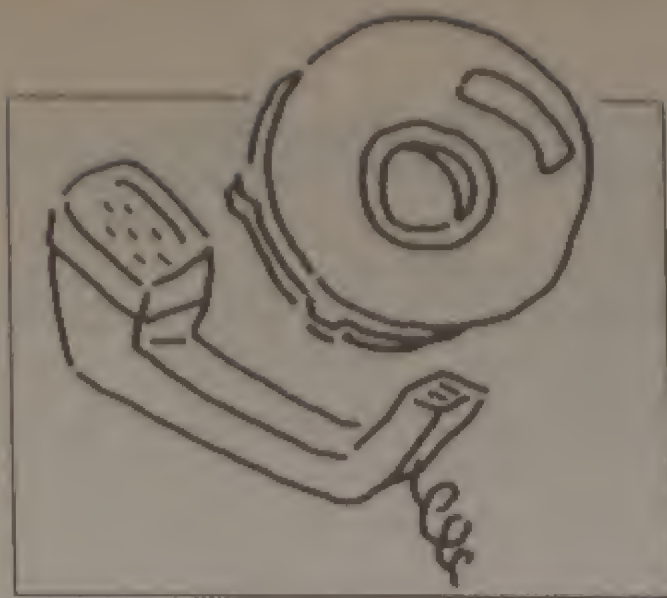
(UNCLASSIFIED thinks here of the Bay of Pigs, the Tonkin Gulf, the Iran hostage rescue mission, to name a few, and within recent days the botched raid on what the "Intelligence Community", after a year or so in the neighborhood and doubtless with the aid of satellites and computers, had determined to be the location of General Aidid in Somalia. The brouhaha over US intelligence assertions that the Chinese freighter Yinhe was carrying poison gas ingredients to Iran ended in the embarrassing acknowledgment after inspection in a Saudi Arabian port that the "intelligence" was in error. The US charges and subsequent harassment of the freighter on the high seas did little to improve already acrimonious relations between Washington and Beijing). In fact, the Committee seems to be saying that on balance the whole \$28 billion dollar effort from time to time has provided reliable information not available through the public media. The same, UNCLASSIFIED is sure, could be said of any number of astrologers, a belief, we are told on good authority, held by former President Ronald Reagan.

Specifics

As noted, S1301, approved by the Committee on a 12 to 5 vote, three of the eight Republicans (D'Amato, Gorton, and Chaffee) joining all nine Democrats, reduced the Clinton administration request by about one billion dollars, essentially duplicating the cut made by the House. Republicans Warner, Danforth, Stevens, Lugar and Wallop, like their HPSCI colleagues, argued in a minority report lauding the contributions of the intelligence agencies that the cuts went too deep and endangered the national security. (Interestingly, while the majority of intelligence committee Republicans in both houses argued for higher intelligence spending, 13 House Republicans co-sponsored HR1127, introduced by Rick Santorum (R-PA). This called for a reorganization of intelligence agencies to reduce duplication and inefficiency and directed a personnel reduction of 25 per cent over the next five years. Santorum's office tells UNCLASSIFIED that the idea originated in the conservative American Heritage Foundation think tank.)

Credit Checks

SR 1301 does not even mention covert operations. However, it does make a number of specific changes in existing law that merit attention. First, and most questionably, it grants the FBI authority to access consumer credit records in counter-intelligence investigations without requiring a court order. The Director of the FBI, or his designee, is empowered by this amendment to the Fair Crediting Reporting Act to issue a "National Security Letter," that requires credit bureaus to turn over their records. Already the FBI has authority to use such letters to gain access to financial institution records and telephone subscriber and toll billing information when it has "specific and articulable facts" allowing the belief that the individual or institution whose records are sought is a foreign



power or the agent of a foreign power. However, the FBI contends that it cannot locate the financial institutions easily unless it can go through the credit records.

It is clear that the SSCI was troubled by the implications of granting this authority and specifically imposed limitations on its use. It also provided in law for semi-annual congressional review of FBI use of "national security letters" for accessing credit records and prohibited transmission of credit information to any other government agency. The review is to be in the form of mandatory reports from the Attorney General to the intelligence committees. Another safeguard is the statement (Section 601 (6)), that, despite the counter-intelligence rationale for FBI access, the FBI must respond to subpoenas or court orders in cases involving its accessing of credit information and, in addition, "Nothing in this subsection shall be construed to authorize or permit the withholding of information from the Congress." Finally, it established procedures for taking judicial action against the FBI or any of its agents who disclosed consumer credit information gained in this manner, allowing individuals damaged by unauthorized release to sue and collect damages.

Increased Budget for Anti-Terrorism

Terrorism continues to play well. S1301 authorizes a 10 per cent increase over the administration request in funds for the FBI's International Terrorism program. The increase is justified on

grounds of the resources being expended on the World Trade Center investigation. The FBI's Domestic Terrorism program, targetted on groups that are based and operate entirely in the US and whose activities are aimed at the US government and population, received full funding. Interestingly, while expressions of alarm increase, incidents of domestic terrorism continue their decade-long decline. In August the FBI's intelligence division reported only four incidents for all of 1992. The eleven year total of 165 incidents included 77 involving Puerto Rican matters. (*Intelligence Newsletter*, September 2, 1993, 7)

The SSCI Report notes that the Domestic Terrorism program funds the FBI's Hostage Rescue Team, which conducted the Branch Davidian and the Randy Weaver operations. While not directly criticizing those fiascos, the Report states that, "In particular, the Committee would welcome an initiative to improve the capabilities of the FBI Hostage Rescue Team...." So would we all.

Other Highlights

One rather significant move toward improved congressional oversight is the proposal to require that the general counsel of the CIA be confirmed by the Senate before taking her or his post. This was done at the initiative of Senator John Glenn (D-OH). Allowing the Senate to query the nominee may result in clarification of just how the CIA interprets the law on, for example, prior notification on covert operations or the application of the state secret privilege in cases like those of Robert Maxwell or Erwin Rautenberg.

S1301 also, unfortunately, resurrects the National Security Education Act eliminated in the House version. It does, though, reduce the trust fund by requiring that \$25 million of the \$150 million appropriated for it in FY 1993 be returned to the Treasury. It remains to be seen how this will be dealt with in the House-Senate conference.

INSLAW Strikes Back

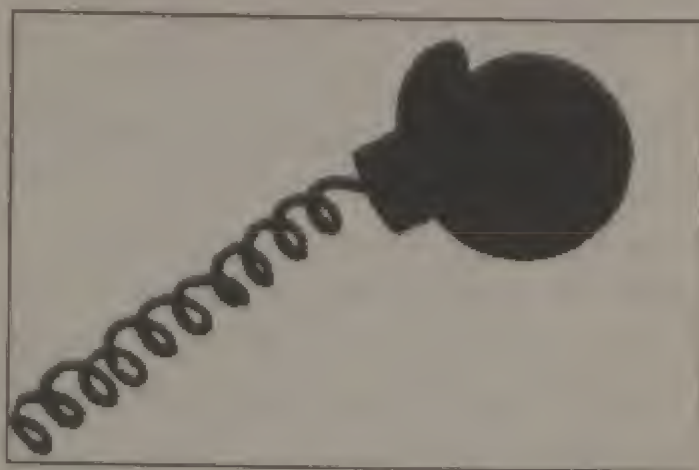
The INSLAW saga continues to fascinate. In its last issue, UNCLASSIFIED examined the report on the case issued by DOJ special prosecutor Nicholas J. Bua. Judge Bua's report dismissed as without foundation charges that DOJ has illegally acquired and is using INSLAW's PROMIS software, nor that it criminally conspired to drive INSLAW into bankruptcy as part of a plot to acquire the software. The Bua Report also concluded that, contrary to INSLAW's charges, the disputed software had not been distributed unlawfully to other government agencies nor to foreign governments. Furthermore, Bua argued that the original bankruptcy court verdict finding for INSLAW that DOJ had wrongfully stolen and converted the software by Judge George Francis Bason, Jr. was wrong and that Federal District Judge William B. Bryant, who reviewed that decision on appeal and confirmed it, had not really examined the evidence. There was no evidence, Bua claimed, that the merit review panel that denied Bason reappointment to the bench was influenced by DOJ's unhappiness with Bason's decision. Moreover, Bua found that the study carried out by the staff of the Senate Permanent Subcommittee on Investigations of the Senate Government Operations Committee and the investigation by the House Judiciary Committee, were likewise erroneous in declaring that there was strong evidence of DOJ wrongdoing. (See UNCLASSIFIED, Vol. V, No. 3.)

Bason's Response

Bua's report was delivered to Attorney General Janet Reno on June 15. Involved parties were requested to address their responses to the Attorney General by August 1.

One of those responding was Judge Bason, now an attorney in private practice in Washington, DC. His memo-

randum addressed four issues. The first elaborated on the point that "All of DOJ's self-investigations (Including the Bua Report) are self-exculpatory; by contrast, every single outside, independent investigation of the issues tried before me has resulted in findings against DOJ." Bason refers here to the investigation by DOJ's Public Integrity section; that by its Office of Professional Responsibility; and, finally,



Bua, whose staff consisted almost entirely of salaried DOJ employees.

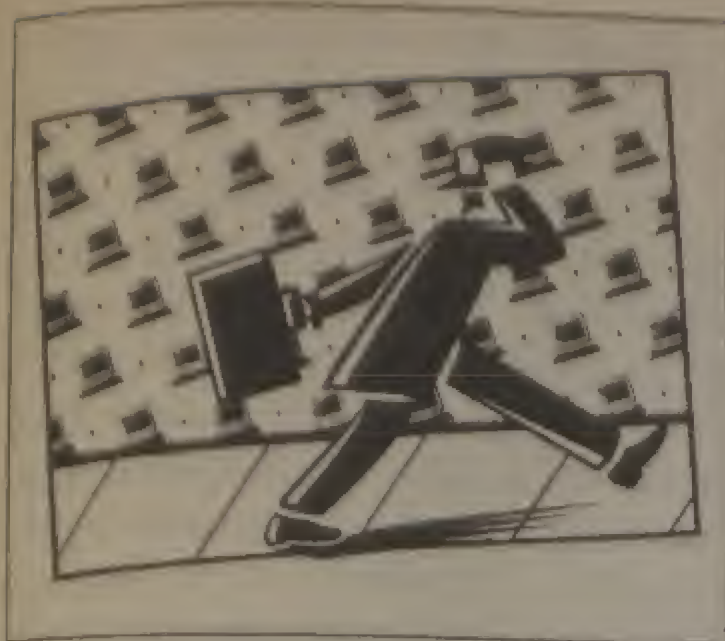
The independent investigations Bason identified were the trial over which he presided, the review of that trial by Judge Bryant, the Senate Committee staff study (which dealt with one of the issues at trial, i.e., whether DOJ's Director of the Executive Office for U.S. Trustees, Thomas Stanton, had intervened improperly in INSLAW's bankruptcy proceedings in 1983), and the House Judiciary Committee Report, "The INSLAW Affair," issued on September 10, 1992. There were, in fact, two other non-DOJ treatments of INSLAW. One was the Federal Appeals Court ruling that overturned Bason and Bryant on the technical ground that bankruptcy court had been the wrong original jurisdiction. However, the Court of Appeals did take note of the previous court findings that DOJ had fraudulently obtained and converted PROMIS and declared that "Such conduct, if it occurred, is inexcusable." The final forum was the Department of Transportation Board of

Contract Appeals (DOTBCA) where, relying on the Court of Appeals verdict, DOJ argued that the Bason and Bryant rulings had been nullified. However, the DOTBCA judge rejected this, saying:

"They [Bason's and Bryant's orders—UNCL] may have been truly vacated and it may be that all the statutes to run have run and they can't go anywhere. Those cases may be dead forever. But it has left a cloud over the respondent [DOJ]." (Judiciary Committee, "The INSLAW Affair," 40, quoting the DOTBCA ruling).

Secondly, Bason takes on Bua for attacking him personally and professionally. In his cover letter to Reno, Bason points out that while Bua "criticizes my findings (and me personally)" he failed to mention that those findings had been fully endorsed by "well-respected Senior District Judge William B. Bryant." Likewise, Bason notes that while Bua's report "repeatedly denigrates" INSLAW's president William Hamilton, nowhere does it mention INSLAW's counsel, former Attorney General Elliot Richardson. The Bason memorandum points out that Bua used sixteen pages trying to refute his findings of fact on DOJ's wrongful conversion of PROMIS, where Bryant, in "a single succinct paragraph explained why the *undisputed facts* (italics in original—UNCL) demonstrate convincingly that DOJ did wrongfully convert INSLAW's software to its own use...." (Bason Memorandum, 5).

Thirdly, Bason, still defending his professional honor, declares that, "There is no basis in fact for DOJ's and the Bua Report's assertions that my opinions reflected bias, and both Senior District Judge Bryant and Chief Judge Robinson so found." Here, UNCLASSIFIED does find Bason somewhat misleading. The discussion in the Bua Report has to do with the fact that Bason had been denied reappointment



to the Bench prior to having delivered his final ruling in the INSLAW bankruptcy matter in February 1987, although he had issued an oral opinion. In his written appeal to the chairperson of the merit panel that selected as his successor DOJ attorney Martin Teel who, interestingly had represented DOJ against INSLAW, Bason mentioned in one paragraph that he had heard from numerous sources that DOJ had worked actively against his reappointment. DOJ used this observation to seek Bason's removal before he could rule in INSLAW, but, as noted, failed. Bua, while careful not to charge Bason with bias, did state (Report, 177-179) that the letter gave some grounds for seeking recusal and since, in view of Bason's bench rulings in the case, was probably going to find for INSLAW, DOJ's move for recusal was both justified and worth a try.

Stonewalling

It is with his fourth and final point that Bason really zeroes in. Why, he asks, did three successive attorneys general stonewall the congressional investigations dealing with INSLAW? Edwin Meese, he points out, spent his last morning in office—August 11, 1988—personally instructing the DOJ witnesses subpoenaed by the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs not to participate in depositions scheduled by the Subcommittee that day unless accompanied by a DOJ attorney. This was despite the

prior understanding between DOJ and the Subcommittee about witness confidentiality.

Attorney General Richard Thornburgh first refused to provide the House Judiciary Committee with documents relating to INSLAW and then refused to appear before the Committee to explain his refusal. He claimed executive privilege, separation of powers, attorney-client privilege, and the "attorney work product" to defend his position. All these arguments had previously been rejected by the courts as far back as Teapot Dome in the 1920s and more recently in executive-congressional confrontations over Watergate and Iran-contra.

Attorney General William Barr, in refusing the Judiciary Committee's call for an independent counsel (see UNCLASSIFIED Vol. IV, No. 5, "The Independent Counsel Debate," 13-16), declared that on constitutional grounds he opposed the whole concept of the independent counsel law. Yet, days later, without any congressional request, he used the statute to appoint an independent counsel to investigate the Department of State in the matter of then-presidential candidate Clinton's passport files.

"What could have motivated each of these three successive Attorneys General to devote such an extraordinary degree of personal attention to impeding Congressional investigations, to provoking confrontations with both Houses of Congress, and to refusing a Congressional request for appointment of an independent counsel?"

Asks Bason: "What could have motivated each of these three successive Attorneys General to devote such an extraordinary degree of personal atten-

tion to impeding Congressional investigations, to provoking confrontations with both Houses of Congress, and to refusing a Congressional request for appointment of an independent counsel?" He concludes by advising Reno that only appointment of an independent counsel can give the public assurance of a thorough and impartial investigation.

INSLAW's Rebuttal

Bason's response was a model of brevity. That by INSLAW ("INSLAW's Analysis and Rebuttal of the Bua Report," of July 12, 1993, by Elliot L. Richardson, Michael E. Friedlander, Philip L. Kellogg, Charles R. Work, James L. Lyons, William A. Hamilton and Nancy Burke Hamilton) is an 80 page monument of thorough and detailed deconstruction. It so effectively discredits Bua's effort that at the end the reader not only joins in the cry for an independent counsel but is tempted to ask also for criminal prosecution of Judge Bua for obstruction of justice or, at least, for waste of taxpayer moneys. (Bua billed DOJ a little over \$300,000 for his work. This did not include the salaries and expenses of the six assistant US attorneys or the two FBI agents assigned to him—UNCL).

The "Analysis and Rebuttal" begins by asking, in the introduction written by Richardson, three major public policy questions:

"[S]hould DOJ, as one of the parties to a civil dispute, be able to use the authority of a federal grand jury and the secrecy requirements of its proceedings to improve its own civil litigation posture? Should DOJ be using its own lawyers and investigators and a federal grand jury to investigate colleagues, superiors and subordinates? How should the tension between the obligation to enforce the criminal laws of the United States and the legitimate need to safeguard intelligence and national security be reconciled?"

More concretely, it deals, in three separate sections: with the charge of

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balming of Casolano's body before an
autopsy was performed, the delay in
notifying his next-of-kin and allega-
tions that local police did not give
enough credence to suspicions of foul
play voiced by several people.

...official documents backing up claims
that source had made to Casolano in
another West Virginia meeting that
occurred a few days earlier. Casolano
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own sensitive information.

DOJ wrongful acquisition of PROMIS; DOJ's attempt to push INSLAW's bankruptcy from Chapter 11 (reorganization) to Chapter 7, liquidation; and, finally, "the indications of a more widely ramified conspiracy involving Earl Brian and the intelligence and law enforcement agencies of the United States and foreign governments."

Bua, the introduction charges, made numerous errors and omissions in reaching his conclusions, errors demonstrable on the basis of prior investigations and trial evidence. He chose, it says, to believe the "self-serving statements" of those implicated in the theft of the software while rejecting testimony on the same points by INSLAW's witnesses and ignoring the evidence that supported the findings of Judge Bason, Judge Bryant, and the House Judiciary Committee. Further, Bua failed in at least 40 instances to pursue testimony or documentary evidence that would have corroborated INSLAW's allegations and contradicted his own conclusions. He also refused to guarantee confidentiality and protection from reprisal to the DOJ and other government officers and employees who would have testified before his grand jury. (The rebuttal contains a list of ten of these informants—their identities concealed—with a synopsis of the information they had privately given to INSLAW).

The matter of Bua's attempts to discredit Judge Bason, "without clearly acknowledging" either Judge Bryant's nor the House Judiciary Committee's affirmation of Bason's findings is discussed. It is noted that in dealing with the alleged attempt to force INSLAW into liquidation, Bua's report has the same pattern of justifying DOJ's version and "downplaying, misinterpreting, or ignoring evidence to the contrary."

On the matter of whether PROMIS is illegally being used in other US government agencies, something brushed aside by Bua, the INSLAW Rebuttal states that at a minimum there should have been computer-based code comparisons between PROMIS and the sus-

pect systems outside DOJ. These, INSLAW says, are simple and inexpensive, yet Bua made no attempt to arrange them.

The \$25 Million Misunderstanding

Finally, Richardson makes the flat and sensational charge that Bua "made an eleventh-hour approach to INSLAW's lawyers" offering to broker a \$25 million settlement with DOJ. "The inference," writes the former attorney general, in one of the year's major understatement, "that Judge Bua was aware of the weaknesses in his own report is difficult to avoid." This is restated on page 1 of the rebuttal in even stronger terms. Bua is said to have "conveyed directly to INSLAW's attorneys that he had reached the opposite conclusion and recommended that DOJ settle its dispute with INSLAW by the payment of \$25 million to INSLAW." Bua has declined to comment on this statement. (See James Ridgeway, "MistakeGate," *Village Voice*, August 24, 1993) However, UNCLASSIFIED has been assured that Bua made the offer directly to Elliot Richardson in December of 1992. Richardson asked Bua if he had authority from Attorney General William Barr to make such an offer. Bua, in a followup call, told Richardson that Barr had told him to stick to his investigation. Richardson has precise contemporary notes on these conversations.



Pathetic, Outrageous, Ludicrous

The whole of INSLAW's Rebuttal is written in tightly controlled fury. Bua's Report is dissected line by line and its conclusions are treated with scorn.

For example, Bua's Report (125) declares the evidence does not support a finding that "DOJ employees intentionally deceived or defrauded INSLAW," a statement allegedly based on, among other things, interview of "many of the individuals involved." INSLAW points out that not only does Bua's Report not identify all those he interviewed but that almost none of INSLAW's trial witnesses were among them. Those who were "commented on the perfunctory character of the inquiry." Bua's conclusion that the DOJ employees involved had only acted in the "best legitimate interests of the government," provoked the following statement in the Rebuttal: "To accept the self-serving, long after-the-fact and *post hoc* rationalizations of these individuals over their testimony at trial, which testimony clearly evidenced their propensity for lying..., as found by two federal courts, is ludicrous."

One omission in Bua's Report concerning the actions and motives of DOJ employees is that in 1987 three presidential senior executive \$20,000 cash awards were made in DOJ. One went to Stuart Schiffer, deputy assistant attorney general in the Civil Division, who was criticized by Bason for his role in the INSLAW case. Schiffer also intervened actively with the Merit Selection Panel to deny reappointment for Bason. (Rebuttal, 73). Another went to Michael Shaheen, head of the Office of Professional Responsibility. Shaheen had recommended the termination of Anthony J. Pasciuto, Pasciuto, deputy head of the Executive Office of US Trustees, in a dramatic courtroom scene, had first denied and then broke down and admitted that he had met with the Hamiltons and warned them of the plan to force INSLAW into liquidation. A \$10,000 award and a ma-

for promotion went to Lawrence McWhorter. Bason had characterized McWhorter's trial testimony "totally unbelievable."

The \$50,000 in senior executive cash awards to these three principals in the INSLAW case was more than half the \$90,000 awarded in DOJ for 1987. "This startling fact is not mentioned in the Bua Report," notes the Rebuttal (27).

The Intelligence Factor

Almost two thirds of the INSLAW Rebuttal is directed at Bua's investigation of the alleged wider conspiracy involving Earl Brian and US and foreign law enforcement and intelligence agencies. Bua essentially dismissed this possibility in his Report. He used a Georgetown University computer expert, Professor Dorothy Denning, to make a study showing that the FBI's FOIMS tracking software installed in 1987 or 1988 could not have been derived from PROMIS, and secured unsworn denials from former FBI Acting Director John Otto, the deputy information systems manager of DEA, Phillip Cammera, and from the CIA that they used any such system.

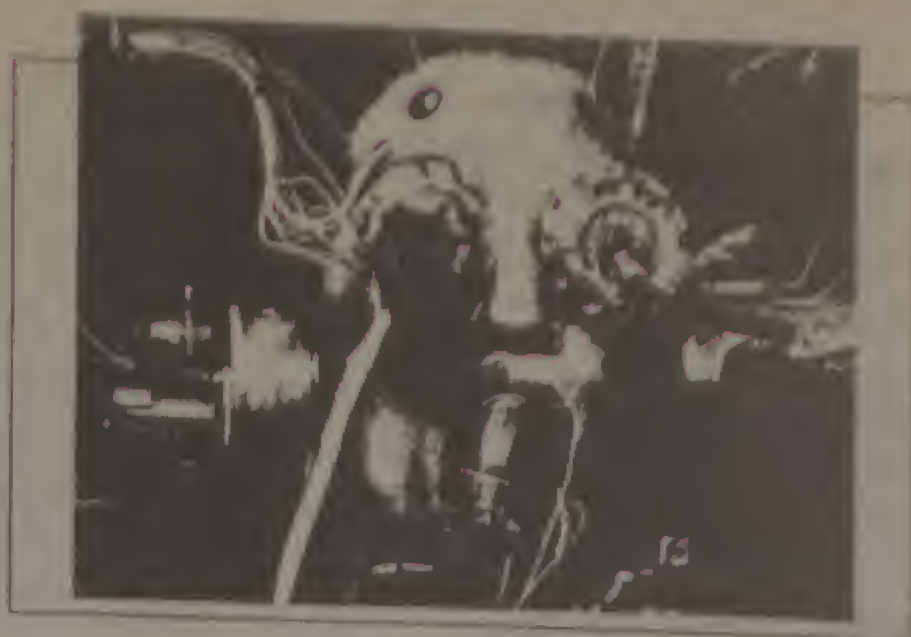
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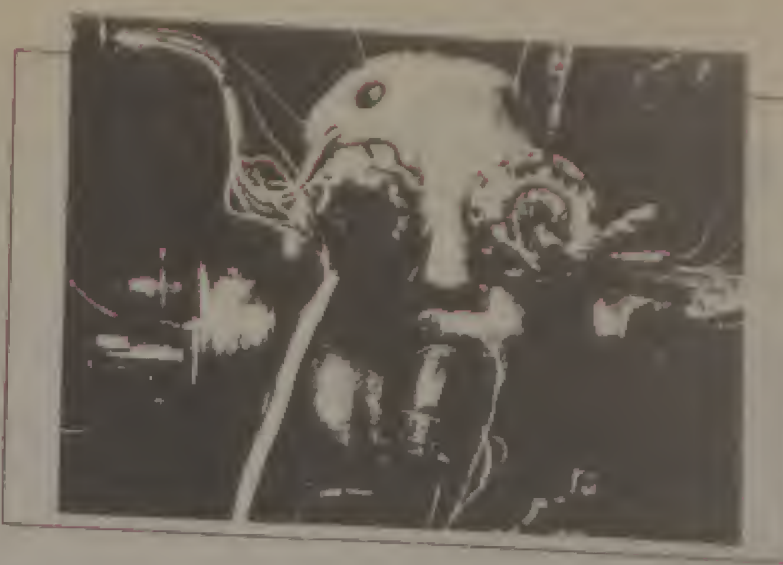
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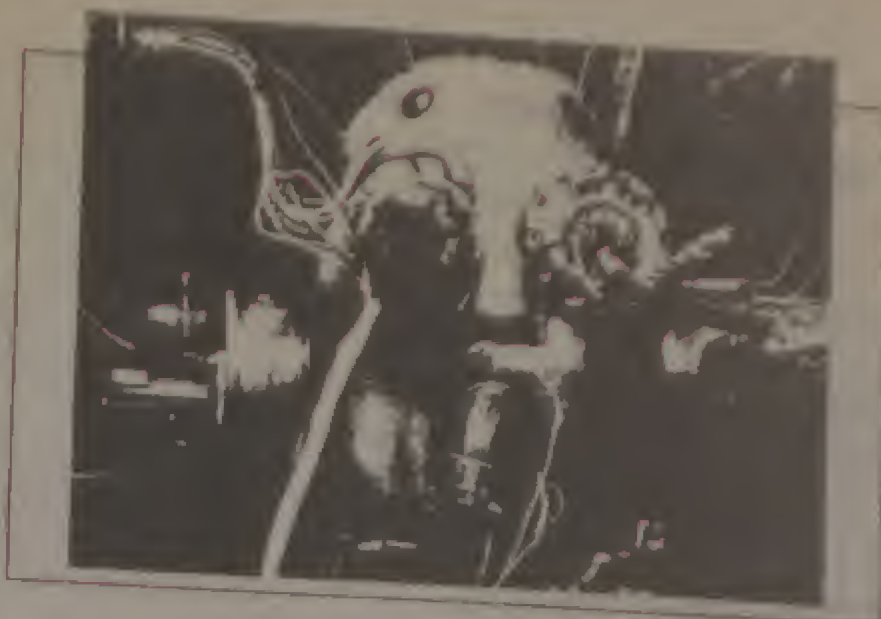
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Riconisciuto, Ben Menashe, and Casolaro

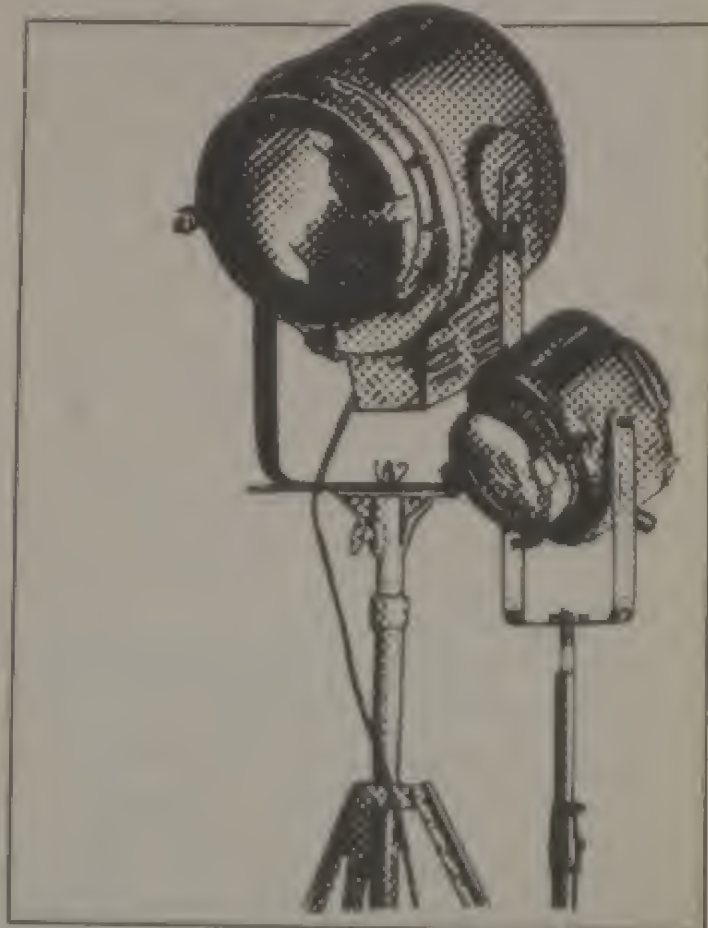
Much of the Bua Report's conclusion that there had been no conspiracy to distribute PROMIS internationally rested on its discrediting of Michael Riconisciuto and Ari Ben Menashe. The INSLAW Rebuttal provides a spirited and convincing rejoinder. Again it points to Bua's consistent failure to put witnesses under oath. Many witnesses claimed to be or to have been members of the CIA or other intelligence services. "The only way," the Rebuttal points out, (51) "to overcome [their]...sworn obligation to silence is to use compulsory legal process, such as a federal grand jury, to require such an individual to answer highly detailed questions under oath. Bua apparently did not do this."

While there is room to quarrel about the reliability of such alleged ex-intelligence assets as Robert Booth Nichols, an associate of Riconisciuto's and one of the major sources for the late Danny Casolaro, the Rebuttal catches Bua in one flagrant misstatement. In impeaching Riconisciuto, Bua declares that Riconisciuto and Earl Brian could not have traveled to Iran in 1980 as consultants for Wackenhut Research Corporation because there is no such entity. However, the Rebuttal establishes that, although Wackenhut Research Corporation no longer exists, in 1980, according to Wackenhut's own annual report, it did. Moreover, the Rebuttal points out that Bua, while denouncing Riconisciuto for not providing the tax records that he claimed would show him and Brian as independent contractors with Wackenhut Research, never subpoenaed these records either from Wackenhut or from the IRS. (Rebuttal, 52).

As UNCLASSIFIED reported in its last issue, Bua relied on John P. Nichols, manager of the Wackenhut/Cabazon Joint Venture, who denied that Brian had ever been to the Cabazon reservation or that Riconisciuto had ever done any work on computers there, without revealing Nichols' convictions

in the 1970s for solicitation to commit murder. The Rebuttal reveals that Bua never brought Nichols before his grand jury or placed him under oath, either.

Another witness Bua relies upon for denials that Brian was at Cabazon for a weapons demonstration on September 10, 1981, is one Wayne Reeder. Reeder, according to contemporary, but admittedly not conclusive, local police surveillance reports, drove Brian to the



demonstration. Reeder denied this to Bua. However, he was not brought before the grand jury nor placed under oath. How credible is Reeder? In June 1993, Wayne Reeder was indicted for insurance fraud by the US Attorney's office in Rhode Island. (Rebuttal, 53). And, of course, hardly was the ink dry on the Bua Report when Brian, such a credible witness to Bua, was named as perpetrator of a serious fraud by the Securities and Exchange Commission.

To clinch his impeachment of Riconisciuto (whose conviction on drug charges he cites while ignoring the criminal records of those witnesses on whom he relies) Bua emphasizes that Brian and the DOJ contracting officer on PROMIS Peter Videnieks, both deny knowing Riconisciuto or each other. However, the Rebuttal refers to a sworn statement made by Margaret Wiencek, the former administrative affairs di-

rector for Brian's Financial News Network (FNN). The statement was given to the Internal Affairs Division of US Customs which has been conducting its own quiet investigation of Videnieks for irregularities in matters other than INSLAW. Since September 1990, Videnieks has been Director of Operational Procurement for Customs.

Wiencek swears that she personally took telephone calls from Videnieks and Riconisciuto at FNN during the first quarter of 1987. That is exactly the time INSLAW filed its pleading in bankruptcy court. (Rebuttal 54, 63)

The Casolaro Mystery

With regard to the death of Danny Casolaro, the free lance journalist who was investigating the INSLAW case, the Bua Report insists that the West Virginia authorities were correct in declaring him a suicide and that it was not a concern of DOJ or the federal government. However, as the Rebuttal points out, Casolaro, in the weeks prior to his death, had been in touch with FBI Special Agent Thomas Gates. Gates was deposed for two days by the House Judiciary Committee in 1992 and said that Casolaro had discussed specific threats on his life with him.

Gates also testified that the FBI possibly had jurisdiction to investigate allegations of Casolaro's murder under the Transportation in Aid of Racketeering statute, but had decided not to do so. Yet, Bua did not interview Gates. Nor did he interview William Turner, the former Hughes Aircraft engineer turned whistleblower, who had been collaborating with Casolaro and was the last person known to have seen Casolaro alive. Soon after Casolaro's death Turner was arrested by the FBI on spurious bank robbery charges. The charges were dismissed, but the FBI seized and refuses to return Turner's files on his dealings with Casolaro. Once again, the Rebuttal makes clear that Bua's investigation hardly comes up to the level of superficiality. (Rebuttal, 62-66).

But Was It All A Mistakegate?

Surveying the scene of litigation, investigations, reports and rebuttals is the magisterial James Ridgeway of the *Village Voice*. (Ridgeway, "Mistakegate," *Village Voice*, August 24, 1993). The author, with Doug Vaughan, of a careful study of Danny Casolaro's death that came down on the verdict of suicide, swallows the Bua Report hook, line and sinker. He begins by outlining the sad tale of little INSLAW, ripped off by Ed Meese while its purloined software was sold abroad for private gain. "The matter," he writes, "is far from resolved, but a recent Justice Department investigation makes a telling [sic] case that there never was much of a there there, and that INSLAW's owners, along with the federal courts and Congress, may have been led down the garden path by a string of con men." Ridgeway concludes: "...the Hamiltons seem to have been victims not only of the Justice Department's contract apparatus, but of conspiracy mongers. The lesson here is that without a prominent figure like Elliott [sic] Richardson involved, and without a lot of political opportunists and credulous reporters, including this one, it never would have gotten as far as it did."

Credulous reporters and political opportunists are, of course, one thing, but this begs the question of why would someone like Elliot Richardson—neither reporter nor opportunist nor credulous—get involved and allow himself to become the victim of conspiracy-mongers. And why, and how, did the federal courts and Congress—institutions with a built-in bias against conspiracy theories—allow themselves to be led down the garden path? And for so long?

Ridgeway, like Bua, focusses on Michael Riconosciuto and Ari Ben Menashe as the tempters, to the exclusion of other sources, and he buys Bua's theory for their involvement. Ben Menashe was telling tall tales in order to sell his book. Riconosciuto was in-

venting stories to try to save himself from being prosecuted for drug dealing.

Ridgeway, a good reporter, seems in this instance to have overlooked a number of things. For one, he doesn't mention the SEC complaint on Earl Brian. He also confuses the chronology. He says Riconosciuto cannot be believed because at the time he first told his story to the Hamiltons in May 1990, he was trying to beat a drug charge. Moreover, he emphasizes somewhat invidiously that it was a correspondent for a Lyndon LaRouche publication who introduced Riconosciuto to Hamilton. In fact, Riconosciuto wasn't arrested on the drug count until after he gave his affidavit to INSLAW. Ben Menashe, as Ridgeway himself acknowledges, denies absolutely that he told or implied to Bua that his affidavits were untrue or that he made his statements in order to publicize his book.

Finally, Ridgeway misinterprets the Senate Permanent Investigations Committee Staff Report, saying it "found no grounds for the Hamiltons' growing conspiracy theories." In fact, as shown above, that Report, even while shying away from drawing firm conclusions, put in the record plenty of evidence and argued it would have had more had not DOJ witnesses been intimidated.

So why is Ridgeway convinced by the shoddy Bua Report, something that two generally conservative senators, DeConcini, a Democrat, and Hatch, a Republican, call a "whitewash?" Why does he now consider the INSLAW affair "a hoax?"

In a conversation with UNCLASSIFIED, Ridgeway clarified his position. While INSLAW probably has a case against DOJ for misappropriation of the enhanced software, a not altogether clearcut case because the original PROMIS was developed with public money, the theory of a global intelligence operation involving the sale of PROMIS software to foreign governments with a modification allowing the CIA to tap in to their secrets is, in his

view untenable. He did acknowledge, though, that the software could have been marketed abroad simply because of its intrinsic information management value. He also argues that Bua's supposed payment offer to Richardson was purely speculative and not serious or official.

Reno Ducks Responsibility—Didn't Happen on My Watch

In mid-June the Hamiltons and Richardson met with Attorney-General Reno. The meeting, by all accounts, was "frosty." (See, "Justice Dept. Inquiry Rejects INSLAW Charges," *Washington Post*, June 18, 1993, A4). Richardson presented three demands:

1) payment of the judgments awarded by Bason and Bryant; 2) refusal from further involvement in future proceedings of those DOJ officials involved; 3) naming an independent counsel.

Reno was silent on the first two and declared that she would not appoint an independent counsel. Her reasoning was that since she had not been involved in the acts of her predecessors, there was no conflict of interest, as described in the expired statute, and she could therefore handle it from her own office. Later, on the Michael Jackson radio talk show from Los Angeles, she made the same statement. However, as Hamilton pointed out to UNCLASSIFIED, this is impossible since it is DOJ itself, through many of its divisions and the officers directing them—her principal deputies—that is involved. Judge Bason made the same point in his Response.



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Central America Revisited

The aftereffects of the 1980s Reagan-Bush overt/covert war in Central America continue to be felt there and in the United States. UNCLASSIFIED reviews here some recent developments.

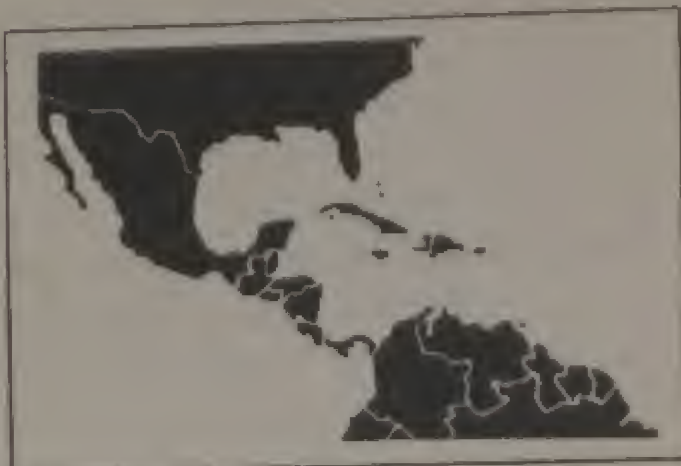
La Penca

Many, if not most, readers of UNCLASSIFIED will recall the May 1984 bombing attempt made on one-time Sandinista, sometime contra leader Eden Pastora at La Penca, an uninhabited spot on the Nicaraguan side of the San Juan River boundary with Costa Rica. He was holding a press conference supposedly to denounce the Honduran-based contra leadership and the CIA which, he believed, had abandoned him and his Costa Rican-based forces for refusing to submit to the direction of the main contra force led by officers of his old enemies, Somoza's National Guard.

Pastora survived the blast which killed eight people and wounded numerous other, including Tony Avirgan, a US journalist resident in Costa Rica. Acting on information provided by an alleged contra deserter, later reported killed for informing, Avirgan and his wife, Martha Honey, published articles that linked John Hull, a US native holding Costa Rican citizenship who owned large properties in northern Costa Rica, with the bombing. Hull also was alleged to be an officer or agent of the CIA, coordinating anti-Sandinista military activities in the country. He was an outspoken opponent of Pastora, believing him to be a "communist." The actual bomber supposedly was a right-wing Libyan with CIA connections using the pseudonym Amac Galil and carrying a Danish passport identifying him as Per Anker Hansen.

Hull sued Avirgan and Honey for libel in San Jose, Costa Rica, in May 1986. The Christic Institute, a Washington-based public interest law firm,

represented the two journalists, using a strategy that, in effect, put Hull, the CIA, and the US government on trial for running a mercenary war against Nicaragua from Costa Rican soil. They won the suit. Then Avirgan and Honey used the Christic Institute to file a civil RICO (Racketeer Influenced and Corrupt Organization) personal damage suit



for \$14 million against Hull and some twenty-odd individuals, former US military and CIA officials and Cuban-American assets or agents of the CIA, as having been responsible for the injury to Avirgan, a predicate act under the RICO statute.

In June 1988, however, presiding Federal Judge James King, dismissed the suit as "frivolous" and made Christic and the defendants liable for payment of the \$1.3 million costs incurred by the defendants. This was despite the fact that Costa Rican authorities, after their own investigation, had arrested Hull and Felipe Vidal, a Cuban-American named in the Christic suit, for drug trafficking in addition to involvement in the bombing. Both, after suspicious escapes from Costa Rica, are currently in the US resisting extradition. An appeals court confirmed King's ruling, effectively putting Christic out of business as well as, at least in much of the public mind, discrediting the charges of a long-continuing CIA-aided conspiracy to commit a variety of crimes in support of covert operations. Avirgan and Honey, as well as a number of lawyers associ-

ated with the suit, soon claimed that Christic lead attorney Daniel Sheehan had improperly litigated the matter from the outset, jeopardizing and eventually losing a suit important not only to the plaintiffs but for public policy. The result was a falling out between plaintiffs and Sheehan and a controversy among many of Christic's erstwhile supporters and liberal critics who were furious about waste of the considerable amounts of money contributed for the suit and for making those who had supported it publically appear naive.

The Controversy Rises Again

As Iran-contra itself drifted toward history, so did the Christic case. However, on August 1, *Miami Herald* reporter Juan Tamayo revived it in a front page story with the sensational claim that the La Penca bomber was not right-wing hit man Amac Galil, but a now dead Argentine revolutionary named Vital Roberto Gaguine who allegedly had worked for Sandinista intelligence in the 1980s. Fingerprints from Gaguine's Argentine police file matched exactly a Panamanian police file under "Hansen" found by investigative reporter Doug Vaughan. Gaguine's father, now living in Miami, said definitely that the pictures of Per Anker Hansen were those of his son. A former KGB officer told Tamayo in Moscow that he recalled reports from colleagues that the Sandinistas had carried out the attempt under a Cuban intelligence officer named "Carlos Montoya." Tamayo guesses that this was was Renan Montero, a Cuban who helped the Sandinistas organize their intelligence services and did, as former Nicaraguan Interior Minister Tomas Borge acknowledges, recruit a number of agents throughout Latin America. The Argentine ERP faction with which

Gaguine was associated was the assassination of the National Guard Major in Honduras in 1981 and the remains were wiped out in an Argentine...

Possible Likely C

Not surprising Singlaub and others are declaring Washington Times Garvin wrote a Washington City in La Penca? assailing the left romanticizing himself, who lo CIA for the str knew it was his along. Costa Ric dropped charges. Moreover, they p dence in Panama sible relationship (Miami Herald, 16A). In 1984, M services to the Sandinista leader

Montero rel says he has no k involvement in his credibility is that he refused t tigators access gence files on L was active and Martha Honey an the files were de tions of 1990. T 1993, 34-35), qu vate investigation cussed the ne Sandinista leader plicity. However assure me that the security app involved."

So far, Sheeh ment. However,

Gaguine was associated is credited with the assassinations of Nicaraguan National Guard Major Emilio Salazar in Honduras in 1979 and of Anastio Somoza in Paraguay in 1980. Gaguine and the remaining ERP cadres were wiped out in a suicide assault against an Argentine army barracks in 1989.

Possible Truth and Likely Consequences

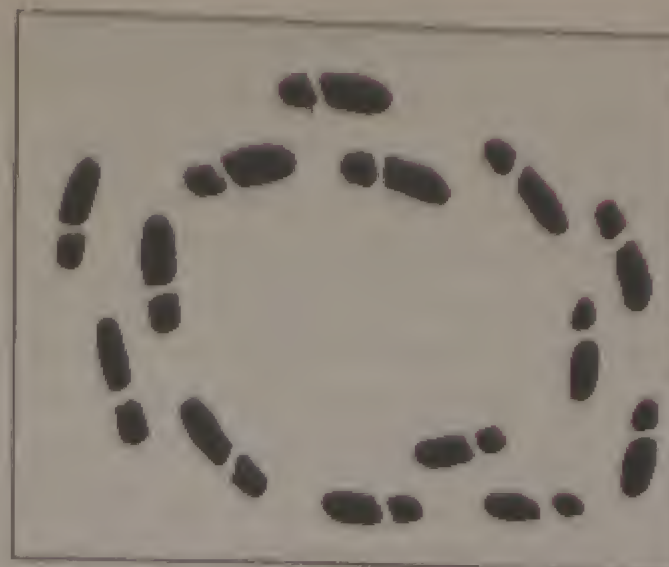
Not surprisingly, Hull, Vidal, John Singlaub and other Christic defendants are declaring vindication. Former *Washington Times* reporter Glenn Garvin wrote a gloating piece in the *Washington City Paper* ("Who Bombed in La Penca?" August 6, 1993, 15), assailing the left for its naivete and for romanticizing the Sandinistas. Pastora himself, who long has denounced the CIA for the attack, now declares he knew it was his Sandinista enemies all along. Costa Rican authorities have not dropped charges against Hull or Vidal. Moreover, they point to Gaguine's residence in Panama as evidence of a possible relationship with Manuel Noriega (*Miami Herald*, September 3, 1993, 16A). In 1984, Noriega has offered his services to the US to assassinate the Sandinista leadership.

Montero refuses comment. Borge says he has no knowledge of Sandinista involvement in La Penca. However, his credibility is not helped by the fact that he refused to allow Christic investigators access to Nicaraguan intelligence files on La Penca while the suit was active and now, according to Martha Honey and Doug Vaughan, says the files were destroyed after the elections of 1990. *The Economist* (July 10, 1993, 34-35), quotes an "American private investigator" as saying he discussed the new revelations with Sandinista leaders who deny any complicity. However, he says, "none could assure me that a renegade element of the security apparatus had not been involved."

So far, Sheehan has made no comment. However, Christic board mem-

ber Billy Davis informed UNCLASSIFIED that all the documents amassed by Christic supporting the original charges have now been made available to the public at the private National Security Archives in Washington. Avirgan and Honey have both published articles (Honey, *San Francisco Chronicle*, August 2, 1983; Avirgan, *The Nation*, August 29, 1993) acknowledging that the preponderance of the evidence now points to a man believed to have worked with Sandinista intelligence. The question they raise, based on the knowledge that Argentine revolutionary groups were infiltrated and controlled by the military dictatorship in Buenos Aires that organized and trained the contras for the CIA (See UNCLASSIFIED, Vol. V, No. 2, for review of Edwin Martin Andersen, *Dossier Secreto: Argentina's Desaparecidos and the Myth of the Dirty War*), is whether Guaguine/Hansen/Amac Galil, might not have been a double agent. However, as investigative journalists they find themselves embarrassed in having the thesis they advanced for almost a decade now under serious attack, even while they are still liable for the legal expenses of those they charged.

Association member Jack Terrell, a key witness in Avirgan and Honey's libel trial in Costa Rica, recently spoke with UNCLASSIFIED. He maintains that in December 1984 at a meeting in the Miami residence of FDN political leader Adolfo Calero, with Calero, Hull, FDN military chief Enrique Bermudez, and Oliver North's aide, Robert Owen among those present, killing Pastora in some way that would implicate the Sandinistas was planned. Reference was made to the failure of "our" previous attempt. Among those at the meeting was a man described to Terrell as Amac Galil, a Mossad agent. At the libel trial, and later in a Costa Rican police photo lineup, Terrell identified this "Galil" as the man called Per Anker Hansen. Terrell believes that Hull, who, much previous evidence indicated, had helped get "Hansen" safely



out of Costa Rica after the blast, is orchestrating the current situation from his US residences in Greeley, Colorado, and Miami.

Miami Attorney John Mattes also assured UNCLASSIFIED that his former client, Jesus Garcia, who was at meetings where assassinations to be blamed on the Sandinistas were discussed, reported that members of the Miami Cuban anti-Castro underground boasted of taking part in the attempt against Pastora. Mattes also finds it difficult to believe that an agent of Sandinista intelligence who had been publically paraded in Managua—Swedish journalist Peter Tobiornson, for example, says he saw "Hansen" at a 1983 party in Managua in the company of Montero and Pastora now claims he recognizes "Hansen" as an Argentine revolutionary who had received training at a Sandinista militia camp which he, Pastora, had directed in 1980—could have moved about freely in Costa Rica at a time when the Costa Rican security services were admittedly run directly by the CIA through case officer Nicholas Pappas. Mattes, too, sees Hull as possibly part of a CIA disinformation effort.

A final factor in this confusing affair is the apparent inability of US intelligence—with all its resources in Argentina, Paraguay, Costa Rica and Nicaragua—effectively to counter the damaging charges arising from La Penca. Despite the alleged involvement of numerous US citizens, no official, Washington-level investigation was ever organized. In fact, when the Miami US Attorney's office began in the

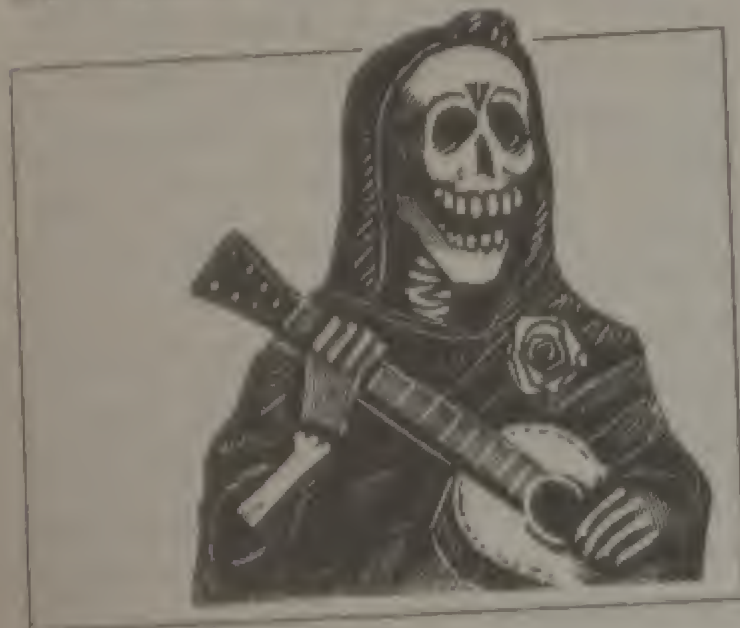
...physical evidence conducted by Dr. Henry C. Lee of the Connecticut State Police Forensic Science Laboratory concluded that the evidence was consistent with suicide.

• The autopsy...

...the facts," the DOJ report said. A prepared statement from Inspectors William and Nancy Hamilton was highly critical of the testimony.

...the thoroughness and reliability of the special counsel's report."

spring of 1986 to investigate charges of narcotics trafficking from Costa Rica against many of the individuals named in the Christie suit, the case was abandoned under pressure from DOJ. Assistant US Attorney Jeffrey Feldman stated in a sworn deposition, that his superior, US Attorney Leon Kellner, told him the case was political. Feldman charged that Kellner altered his (Feldman's) memorandum, following his investigative trip to Costa Rica, recommending impaneling of a federal grand jury to say the opposite. Moreover, as Honey points out (*SF Chronicle*), the US attempted to derail the Costa Rican investigation, going



so far as to have one of its "experts" assisting the Tico officials, remove the detonator that had been recovered at La Penca from the evidence room. It has never been returned.

The current revelations about Gaguine and his connections with the Sandinistas appear, on the surface, at least, to have resulted from the independent work of a few investigative journalists. Strange, indeed, when one considers the political effect this evidence would have had in 1986 when the Reagan administration was desperately trying to discredit those, including Avirgan, Honey, and Jack Terrell, who were exposing Iran-contra.

Flight of the Condor

One possible clue to understanding all this is found in an account by Nathaniel C. Nash in the *New York Times* of July 20, "Spy Network In-

flaming Uruguay-Chile Tension," A7. Nash writes of a Chilean chemist, Eugenio Berrios, who specialized in putting nerve gas into spray canisters for the Chilean secret service. He is suspected of participating in planning the assassination of former Chilean ambassador to the United States Orlando Letelier in 1976 in Washington DC. Last November, there was a scandal in Uruguay when Berrios escaped from a beach cottage and told local police he was being held by two Chilean intelligence officers who were going to kill him. The police turned him over to the Uruguayan army which promptly returned him to his captors who then spirited him out of the country.

Writes Nash, "His escort out of Uruguay...was with the help of a network of intelligence officials, called Operation Condor, working in Argentina, Chile and Uruguay. With near impunity, and beyond the control of Government, it protects former colleagues involved in crimes of past military Governments and apparently has no trouble crossing borders, falsifying documents and gaining access to large amounts of funds." Operation Condor was formed in 1975 by the heads of military intelligence from Argentina, Paraguay, Uruguay and Brazil. Its founder, Chilean General Manuel Contreras (one of those charged in the murder of Letelier), described its purpose as "to neutralize the Government's principle adversaries abroad, especially in Mexico, Argentina, *Costa Rica* (italics UNCL), the United States, France and Italy."

Many of Operation Condor's members were also active in the World Anti-Communist League (WACL) whose president, retired US Major General John K. Singlaub, was one of the defendants in the Christie suit. (For background, see John Lee Anderson and Scott Anderson, *Inside the League: The Shocking Expose of How Terrorists, Nazis, and Latin American Death Squads Have Infiltrated the World Anticomunist League*, Dodd, Mead, 1986).

The Larger Context

The La Penca revival comes in the context of a renewed effort under the Clinton administration to complete the Reagan-Bush program in Nicaragua by destroying the Sandinistas as a legitimate political force with a chance of returning to power in the elections of 1996. Closer in time are the elections scheduled for next March in El Salvador. Here, too, observers see an apparent administration policy, to discredit and marginalize in advance any political organization put together by the former guerrillas of the FMLN.

The UNO electoral coalition, formed, directed, and financed by the US, won the Nicaraguan elections of February 1990. However, handpicked President Violeta Chamorro and her chief adviser, businessman Antonio Lacayo, soon outraged the right wing elements of the coalition and their US supporters, by their policy of conciliation toward the Sandinistas (FSLN). The FSLN remained the largest single political force in the country, taking 42 per cent of the vote and the same percentage of seats in the national legislature.

The Sandinista head of the armed forces, General Humberto Ortega, brother of former president Daniel Ortega, remained in his post. The intelligence services, formerly in the Ministry of Interior, were transferred to the Ministry of Defense and put under control of former secret police chief Lenin Cerna. Initially, the national police forces remained under existing leadership, and there were guarantees that, as provided under the national civil service law, there would be no wholesale dismissal of government workers because of their political affiliation. Most importantly, Chamorro agreed with the FSLN that there would be no abrupt attempt to return the urban or rural properties that had been affected by Sandinista land reform in the 1980s to their previous owners without detailed due process examination of claims. In return for this, the FSLN agreed that it would act as a responsible parliamentary opposition.

The UNO rightists soon formed an anti-Chamorro bloc in the national assembly that had the effect of forcing the president to negotiate her program with the FSLN which, in view of the UNO split, effectively controlled the Assembly. This legislative leverage was INCREASED by the fact that the FSLN was backed major elements in organized labor and among peasants and smallholders.

The rightists had strong support in the US, especially from Senator Jesse Helms (R-NC), ranking minority member of the Senate Foreign Relations Committee. Helms persistently argued that no US foreign aid should be provided to what he

described as the Sandinista-infiltrated Chamorro government. He specifically insisted that monetary aid be denied until all



property in Nicaragua claimed by "US citizens" was returned to them. The citizens in question, by the way, were in large measure, Nicaraguan supporters of the Somoza regime, whose property was confiscated only after they abandoned it to come to the US where they subsequently took out US citizenship.

Another demand of the UNO rightists and their US backers, was that no aid should be delivered until all Sandinistas were removed from the military and the police—rather like a demand that since the Democrats were elected in 1992, all known Republican be removed from the US armed services, intelligence, and police forces. In the Nicaraguan context, this, at bottom, was caused by right wing concern that in order to reverse the land reform, labor rights and other artifacts of the Sandinista regime, it would be necessary to have the armed forces of the state completely cleansed of elements still committed to the reform ideology. In fact, they explained the accelerating economic decline of Nicaragua since

the election, making it now the poorest country in the hemisphere except Haiti, as due to the fear of foreign capital to invest unless all Sandinista influence is expunged.

Detailed analysis of the Nicaraguan political and economic situation is outside UNCLASSIFIED's focus on covert activities. Suffice it to say that as the economic situation has deteriorated, a situation exacerbated by delays in the delivery of promised US assistance as a condition of extracting more concessions from the surprisingly resistant Mrs. Chamorro, political tensions have risen and along with them US pressure for a change in her policy toward the Sandinistas.

Sandinista Dirty Linen

Not only La Penca, but other recent events embarrass the FSLN and make it more likely that the *de facto* alliance between the Sandinistas and Mrs. Chamorro cannot be sustained. First, on May 23, a car, loaded with explosives exploded in a Managua garage. The blast ripped open a concealed arms dump under the garage containing US-made C-4 plastic explosive, Soviet-bloc and US-made arms and ammunition, and, most intriguingly, a number of Soviet-supplied surface-to-air missiles (SAM) from Nicaraguan army stocks. Additionally, documents, including blank Nicaraguan passports, were found indicating connections with foreign revolutionary (terrorist) organizations, including the Basque ETA. Plans for kidnapping of government figures and wealthy individuals in various countries were also found. Compounding the situation was the fact that some of the World Trade Center bombers in New York had also used Nicaraguan passports.

The owner of the garage was a Basque, given Nicaraguan citizenship in the 1980s. If anyone needed proof positive that this was all the evidence needed of Sandinista support for world terrorism, the supposed clincher was that the former FSLN Minister of Inte-

nior, Tomas Borge, who lives nearby, showed up on the scene in his pajamas.

Salvadoran guerrilla leaders Salvador Samayoa and Pacundo Guardado promptly acknowledged that the cache belonged to their FPL faction of the FMLN. This led to denunciations from the United Nations Peace Commission, since the cache had not been reported to the Commission as the peace agreement required. Salvadoran President Alfredo Cristiani quickly claimed that this made the FMLN ineligible to participate in the forthcoming elections, since, clearly, concealment of the arms showed it had not renounced force. At any rate, the affair severely smirched the image of the FMLN, at least in international public opinion, and all but wiped out the sympathy for its cause that the Salvadoran Truth Report had aroused. (See UNCLASSIFIED, Vol.V, No.2, p.22.)

Although Sandinista authorities, including General Ortega, denied responsibility for or knowledge of the cache, and denounced the FPL for its deceit, most observers, inside and outside Managua, concluded, with some reason, that the intelligence system, under control of Cerna, must at least have known of the installation. Even the pro-Sandinista Managua review *Envio* (July 1993, p.3) allowed that discovery of this arsenal, with missiles that could only have come from the Nicaraguan military, put Humberto Ortega and company "in a very bad light." The *Wall Street Journal* whooped it up in a July 23 editorial, "Ollie North Was Right." The Sandinistas were, in fact, nothing but terrorists who had deceived US liberals. "And so much for the credibility of both the Salvadoran guerrillas and the United Nations' 'Peace Commission'...."

In a telephone conversation with UNCLASSIFIED, Sandinista former deputy foreign minister Alejandro Bendana, argued that something was fishy. Obviously, the explosion had been set off to discredit the Sandinistas. Why, he asked, would the Sandinistas keep an arms depot for the FPL in

Managua, instead of in some remote location near the Honduran border? He pointed out that Humberto Ortega had worked closely with the UN in uncovering dozens of arms caches throughout Nicaragua and been commended for his cooperation. Moreover, the police in Managua have been under the control of the fanatically anti-Sandinista *alcalde* (mayor) Aleman, for the last three years. Finally, he noted that all the passports found in the depot were of the new type issued by the Chamorro government. (This aspect of Bendana's claim was verified by State Department Inspector General Sherman Funk in testimony before Congressman Tom Lantos' (D-CA) House Foreign Affairs Committee Subcommittee on International Security on July 22. In response to a question about the Nicaraguan passports found in the vault, Funk declared that Nicaraguan passports have become a particular problem. Apparently, underpaid Nicaraguan government workers are selling them wholesale, especially to narcotics traffickers).

Nevertheless, the fat was in the fire. At the end of July, the United States Senate passed a resolution calling for suspension of the \$98 million in foreign aid scheduled for Nicaragua until the Chamorro government cleaned up

the situation, which meant firing Humberto Ortega. Chamorro resisted until her whole government, indeed the country, seemed on the point of collapse at the end of August. A gang of rearmed contras lured government officials, including Sandinista legislators, to a meeting to discuss grievances in the northern town of Quilali, then held them hostage demanding the dismissal of Ortega. In retaliation, a group of former Sandinista soldiers then seized a number of right wing politicians, including Vice President Virgilio Godoy and Assembly leader Alfredo Cesar, threatening to hold them until the contras released their captives. For a few tense days it seemed as if civil war would erupt. Fortunately, both sides agreed to release their prisoners.

Clearly, the series of incidents hurt Sandinista prestige. The arms cache blast and the La Penca charges, particularly, damaged them among such former relatively friendly US legislators as Senator Chris Dodd (D-CT) and Patrick Leahy (D-VT), both of whom voted to suspend the aid funds. The hostage standoff was the last straw.

On September 2, Chamorro dismissed Lenin Cerna and announced that she would be asking for the resignation of Humberto Ortega. Without the security forces as a power base, the

Sandinista political future looks bleak. One clear lesson can be drawn, however. Indulging in covert operations, whether in the name of rightwing national security or leftist revolutionary solidarity, is a dangerous and usually self-defeating game that inevitably taints and corrupts those engaged in it. The Sandinistas, the FMLN, and, for that matter, the forces for popular democracy in Central America and their supporters outside the region, are all going to pay dearly for the stupidity of the Sandinista intelligence apparatus.

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Washington Roundup

Shadow Justice Footnote

Since so much of this issue has been taken up with discussion of Shadow Justice-related issues there is little need, or space, for a review of ongoing cases. Readers, however, may be interested in the text of a letter sent to DCI James Woolsey by Congressman Howard Berman (D-CA), chairman of the House Foreign Affairs Committee Subcommittee on International Operations with regard to the case of Erwin Rautenberg.

July 21, 1993
James Woolsey
Director of Central Intelligence
Central Intelligence Agency
Washington DC 20505

Dear Mr. Woolsey:

I am writing about the case involving Air-Sea Forwarders, Inc. of Inglewood, California, and E-Systems, Inc. of Dallas, Texas.

I will not enter into the substantive issues presented by the litigation. I simply wish to raise the rather troubling question of the Agency seeking

protective orders which, as in this case, may not be seen by a party to litigation, and whose existence may not be discussed by him. Since the content of the protective order could affect the legal rights of that party, the Agency's position appears to reflect a "star chamber" mentality which could be profoundly dangerous to our system of justice. I understand that the U.S. Supreme Court has at least allowed disclosure of the existence of the protective order, although that leaves the larger question unresolved of a party to litigation not having access to

court orders which go to the heart of the issue under litigation.

I would encourage the Agency to reconsider its position. I look forward to your early reply.

Sincerely,

HOWARD L. BERMAN
Chairman, Subcommittee on
International Operations

On September 8, CIA Director of Congressional Affairs, Stanley Moskowitz wrote Berman to assure him that in effect, the government—a non-party to the suit, has been forced into invoking the state secret privilege by Air-Sea Forwarding (Rautenberg's) unreasonable demands. In fact, says Moskowitz, "the protective order serves to protect from discovery or use at trial classified information that does not pertain in any way to the issues being litigated by the parties." UNCLASSIFIED can only wonder why, if this be so, that Rautenberg has, at enormous personal expense, insisted on the opposite.

More Missing Military

In its last issue, UNCLASSIFIED reported that relatives of US servicemen who have died in alleged suicides had formed an organization called *Until We Have Answers* to demand further investigations into the deaths. About fifty families were involved at the time of our report. The number has now grown to 72.

Congressmen David Levy (R-NY) and Frank Pallone (D-NJ), joined by 22 other members of the House, wrote Secretary of Defense Les Aspin on July 21, requesting that he direct DOD's inspector general to investigate the circumstances in 14 cases where the families involved had met in May with the investigators from the House Armed Services Committee. On August 5, eleven senators, including both of those from New York, as well as SSCI chair-

man Denis DeConcini, addressed an identical letter to Aspin. Finally, Levy and Pallone introduced an amendment to the Defense Authorization Bill that, if passed (which according to congressional staff involved is unlikely) would require DOD's inspector general to reinvestigate any finding of suicide where the family of the deceased requested it on grounds of suspected inadequate earlier investigation.

Captain Consuegra Is Missing

Among military cases attracting attention is that of Air Force Captain Edward Consuegra. Consuegra was contracting officer for Air Force computer purchases at the Gunter Annex to Maxwell Air Force Base, Montgomery, Alabama. He disappeared on December 3, 1992. Three weeks later the General Accounting Office released a scathing report indicting the Air Force's Standard Systems Center, to which Consuegra was assigned, for gross mismanagement of a \$940 contract with the Unisys Corporation. The contract had been arranged, incidentally, by former Deputy Director of Central Intelligence Frank Carlucci. (*Montgomery (Alabama) Advertiser*, January 12, 1993.

There are eerie similarities to the INSLAW case here. A major computer contract; suspicions, reinforced by government investigation, of largescale corruption involving a government insider with intelligence connections; and the disappearance of a contract manager who, his family believes, may have learned too much.

Economic Intelligence Update II

On August 3, a rare public hearing of the Senate Select Committee on Intelligence (SSCI), produced some candid statements on the economic intelligence question by spokesmen for US industry and also by former State Department Bureau of Intelligence and Research (BNR) economic specialist



Mark Lowenthal, now Senior Specialist in US Foreign Policy for the Congressional Research Service (CRS). The business witnesses were John F. Hayden, corporate vice-president of the Boeing Company; Richard Blay, Boeing's Director of Security; and Thomas F. Faught, director of the Faught Management Group, a former chairman of the Dravo Corporation and, from 1987 to 1990, Assistant Secretary of the Navy where he was responsible for technological procurement.

To the apparent surprise of at least some of the senators, the witnesses, to a man, firmly rejected, indeed, seemed to recoil from, any idea of getting the intelligence agencies involved in providing them information. They were unanimous in the belief that there is more information available from open sources than business can, or is organized to, use. Even in the area of counter-intelligence, where they agreed that intelligence agency information of specific threats would be useful, they were careful. First, they believed the "threat" had not been sufficiently quantified or made specific to the concerns of individual businesses to justify either the expenditure of tax dollars or elaboration of security measures. Faught argued that capital is better expended on research into new technology than on trying to protect the old, except through clear legal procedures to protect intellectual property. As he put it, those foreign firms that try to acquire technology through espionage are usually twelve years behind.

In opening the hearings, Chairman Denis DeConcini (D-AZ), noted that much moaning of the topic had yet to



David DeConcini

produce any consensus in the Committee on what, if any, was the proper role of the intelligence system. He noted that both DCI Woolsey and his predecessor, Robert Gates, recommended an essentially counter-intelligence role to protect American businesses, but opposed espionage to assist US firms. DeConcini, though, wondered if we were not putting ourselves at a disadvantage if we did not, like other countries, have our intelligence services "pass along information that would be useful to...domestic business interests." The issue, he said, "...really lies in terms of what more the intelligence community could or should do that would improve the competitive position of U.S. firms abroad, consistent with applicable law and international practice."

Senator Howard Metzenbaum (D-OH), speaking as a senator and former businessman, denounced the whole idea as a scheme to perpetuate and expand the intelligence bureaucracy in the post-Cold War era, and one fraught with negative potential.

Max Baucus (D-MT), from a state without much industry, high tech or other, urged a strong US intelligence effort to "maintain our technological edge, national security and our moral leadership." He was disturbed by reports of "foreign predatory practices" We must develop an "ability to retaliate in kind." Fighting words.

No Help Wanted

John Hayden of Boeing emphasized that his company had no desire for US intelligence to provide "technological, marketing or economic information about our competitors." He did acknowledge that he would welcome "counter-intelligence" about economic espionage, but Boeing itself could then "take appropriate steps to protect the competitive advantages we have won through our own hard work."

Faught, a veteran of international business dealings, was even more dismissive of a need for intelligence system intervention in any form. Said Faught:

I have difficulty appreciating what would be the value of economic intelligence collection efforts given the difficulty of determining the type or nature of data to seek, the highly specific needs of individual companies, the challenges of equitable dissemination and the probable cost involved, not to mention the possible damage to international trade and political relations which such efforts might incur...."

If businessmen Hayden and Faught were less than lukewarm, former intelligence official Loewenthal was positively cold. "What," he asks, "are the problems the Intelligence Community is being asked to address?" The concerns being expressed, he says, "are rather vague, at least in terms of finding ways to apply intelligence to them, and, I believe, difficult to substantiate." He charges that US businesses are probably not using the government-provided open source information already available, a point raised also by Faught.

Foreign economic espionage? How big a problem? Lots of emotion here, but not much data. The same three or four stories are repeated over and over, he points out, producing the effect known in the intelligence business as "echo." He makes the commonsense observation that if the US is the object of technological espionage this is because we remain the leader in technological development. After all, he recalls, the US textile industry was founded on the successful economic espionage of Samuel Slater, who brought the plans for the most modern British mills to the technologically backward United States in 1789.

"...in 1992, the 32 largest American companies reported losses of data to their competition worth \$1.8 billion. This is about 3/100ths of 1 per cent of US GDP. In addition, 70 per cent of this loss was to domestic competitors. In other words, the actual reported loss to US companies of foreign espionage (or espionage by foreign companies) was only about \$500 million."

Loewenthal notes that the American Society of Industrial Security reports that in 1992, the 32 largest American companies reported losses of data to their competition worth \$1.8 billion. This is about 3/100ths of 1 per cent of US GDP. In addition, 70 per cent of this loss was to domestic competitors. In other words, the actual reported loss to US companies of foreign espionage (or espionage by foreign companies) was only about \$500 million.

His survey of Fortune 500 companies conducted for CRS revealed that only a very few are organized to receive and utilize current "intelligence-type" information, even from the public media. Many questioned the utility of doing so. He scoffs at those in the intelligence agencies who advance the idea of economic intelligence as a post-Cold War mission. Their arguments, he says, are "fallacious and self-defeating." For the CIA even to serve as a "clearing house" for open source information he finds inappropriate. Other government agencies, such as the Commerce Department are far more suitable. He also raised the familiar question as to how, in today's global economy, does one define "an American firm."

For UNCLASSIFIED, every point made by Loewenthal, emphasizing and reinforcing the doubts expressed more mildly by Hayden and Faught, had the

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...the special counsel's report." ■EJP

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102d Congress, 2d Session

FOR YOUR INFORMATION!
September 3, 1993

distinct ring of nails being pounded into the coffin of "economic intelligence." The senators, for their part, aside from Metzenbaum, who hailed the presentations as "a breath of fresh air," seemed somewhat taken aback and puzzled that the business executives had told them, "Thank you, but no thank you."

Target Cornflakes

Proponents, though, were quick to respond. Industrial security firms, many staffed by former US intelligence system officers, insist the problem is, if anything, understated. The problem, one security executive said, is that American companies "don't have the slightest idea of what's going on. Foreign intelligence agencies are eating them alive." Because the value of data is hard to quantify, the \$1.8 billion loss figure reported by ASIS may really be "20 times that amount." Or so "US intelligence officials," with that analytic precision for which they are world famous, tell writer Ronald Yates of the *Chicago Tribune*. These "officials" give as one example of the seriousness of the problem and the depths to which economic spies will descend that "industrial spies posing as tourists...tour[ed] the Kellogg Co. cereal plant in Battle Creek, Mich., in an effort to steal technology used to make cornflakes." (*Journal of Commerce*, September 13, 1993) Is Colonel Sanders' recipe safe?

NED Rises From the Dead

Like Jason in the interminable "Friday the Thirteenth" film series, the National Endowment for Democracy (NED), denied government funding by the House of Representatives (UNCLASSIFIED, Vol.V, No.3, 6), is both ugly and hard to kill. On July 28, the Senate debated the \$35 million NED appropriation and, over determined opposition led by Dale Bumpers (D-AR), approved it by a 74-23 vote. As in the



House vote, there were some strange political bedfellows on both sides of the issue. Both Arkansas's Demo-

cratic senators voted no on a proposal backed by President Clinton. So did California liberal Barbara Boxer, and so did California moderate Democrat Dianne Feinstein. Also voting no were the three liberal Democratic senators from the conservative Dakotas and conservative Democrat Exxon from conservative Nebraska. Along with them were six Republicans ranging from liberal Hank Brown of Colorado to moderate Charles Grassley of Iowa to conservative John Warner of Virginia. On the other side, Democrats who should know better—John Kerry of Massachusetts, Pat Moynihan (!) of New York, even Paul Wellstone of Minnesota and the usually skeptical Ernest Hollings of South Carolina, a long-time NED opponent who now says it has evolved into a "democracy corps"—got in the same berth on the NED gravy train with right-wing Republicans like Florida's Connie Mack, South Carolina's Strom Thurmond, and Bob Dole of Kansas.

In vain, did Bumpers (*Congressional Record*, July 28, 1993, S9633-S9674) ring changes on the arguments advanced by Paul Kanjorski (D-PA) in the House. Why, he asked, did the NED appropriation which began at \$18 million in the Cold War year of 1984, and was gradually reduced to \$15 million in 1987, suddenly begin to rise with the demise of the Soviet Union? \$17 million in 1990, \$25 million in 1991 (The year of the electoral intervention in Nicaragua—UNCL), \$27.5 million in 1992; \$30 million in 1993; and now a call for \$35 million? Mockingly, he complained that only 9.8 per cent went to the Democratic Party while 10.7 went to the Republicans—about \$3.5 million each. Could some of this, he asked, have gone for partisan activities, such as the cost of staging national party conventions? And what,

he asked, were we doing providing another \$3.5 million (10.6) percent to the Chamber of Commerce for its Committee on International Private Enterprise (CIPE)? And then 40 per cent—nearly \$14 million for the AFL-CIO's Free Trade Union Institute (FTUI). The rest is "discretionary money." Said Bumpers, "[A] good big portion of that goes for first-class airfare for everybody else."

In great oratorical form, Bumpers went down the list of NED follies over the last ten years—\$433,000 to undercut Oscar Arias in Costa Rica in 1989; in 1985, \$830,000 to a right wing French student group opposing the policies of President Francois Mitterand; later, a secret FTUI \$1.4 million to other anti-Mitterand organizations. Wouldn't it have been wonderful, he mused, if this had been revealed just before President Clinton had met President Mitterand in Tokyo.

Angrily, he declared that it is impossible to cut Cold War spending. Figuratively throwing up his hands, he denounced the squandering of funds for NED while Medicare could not cover treatment for women's breast cancer.

The Power of Pork

He knew the odds he was facing. David Corn lays out the details in *The Nation* for September 20 ("The Blitz to Save the N.E.D.," 280-281). Establishment media Poohbahs hysterically denounced the House vote, without addressing Kanjorski's main point, "U.S. foreign policy should not be developed and implemented by private groups financed with taxpayers' money." The White House weighed in. State Department Counselor Tim Wirth, who as a Colorado senator, had voted consistently against NED, and the supposedly progressive National Security Adviser Anthony Lake—a grave disappointment thus far in UNCLASSIFIED's view—frantically lobbied the Senate. The Republicans circulated a written appeal from Ronald Reagan.

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As Corn points out, there was no action by the White House when Congress refused funding for its \$293 million FY 93 supplementary UN peace-keeping force request and reduced the 1994 request by a third. What was different about NED? Pure bipartisan Cold War pork.

Terror—More on the World Trade Center

More and more curious revelations about the World Trade Center bombing of last February continue to emerge. Even as DOJ prepares a massive conspiracy trial for the blind Egyptian imam, Sheikh Abdel Rahman, questions are asked about the role played by the FBI's informant, Emad A. Salem. Salem, allegedly a former Egyptian Army officer, had been reporting to the FBI on the Sheik and his group since at least November 1991. (See, *New York Times*, July 15, 1993, A1, B4, July 16, 1993, B5 and subsequent stories). The uncertainty was summed up by the *Times*, on July 18: "Law enforcement officials...insisted that despite Mr. Salem's long-running contact with them, they never had warnings of the Trade Center bombing. But for some members of Congress, a question persisted: if the F.B.I. had penetrated the Muslim circles that have been linked to the Feb. 26 explosion, how could the authorities have been caught so unaware?" ("Week In Review," 2E).

UNCLASSIFIED attended the July 22 hearings called by Tom Lantos (D-CA), Chairman of the House Foreign Affairs Committee Subcommittee on International Security. The purpose of the hearing allegedly was to determine how it had been possible for an individual of Sheikh Abdel Rahman's background to obtain visas to enter the United States and even to gain permanent residence status. The principal witness was State Department Inspector General Sherman M. Funk, several other State Department officials, including Mary Ryan, Assistant Secretary of State for Consular Affairs, were also present.

Funk's testimony at a prior closed hearing had revealed that the consular officers responsible for issuing the visas had been, in fact, CIA officers. That fact had leaked and appeared in the press (*Washington Times*, July 13, 1993, A2; *New York Times*, July 22, 1993, B1). Both papers commented that the revelation would be sure to fuel speculation that there had been a CIA connection with the Sheik as part of the Afghan operation. The *Times* article, in fact, presumed that the CIA involvement would be the focus of Lantos' hearing.

Quite to the contrary, Lantos opened with a denunciation of whomever had leaked the information for endangering national security. Inspector General Funk turned aside the one question about the use of CIA officers as

consuls, asked by Charles Schumer (D-NY), with the reply that he could only deal with this in closed session.

One of the questions his investigation supposedly had dealt with was whether "an agency or agencies of the U.S. Government conspired to bring him into the United States, either to promote stability in Egypt or as a reward for services rendered by the Sheik in assisting the U.S.-backed Mujahideen who were training in Pakistan for activities in Afghanistan...." This, of course, could be interpreted as an admission that the Sheik had rendered services for the Afghan covert war. However, Funk's prepared statement never addressed this point, only stating, "...our work thus far has not lead us to conclude that any agency or individual employed by the U.S. Government intentionally violated or circumvented immigration laws and regulations in order to help the Sheik gain entry to the United States." The reference to "any agency" seemed designed to take the CIA off the hook.

After the hearing, questioned by UNCLASSIFIED about problems caused by putting CIA officers in consulates, Lantos impatiently answered that he was aware of them, and hurried off. Later, former consular officer J. Michael Springmann, offered to meet with the subcommittee or its staff to discuss his own experience (See UNCLASSIFIED, Vol. IV, No. 4, p. 9). Lantos did not bother to answer his letter.

UNCLASSIFIED CLASSIFIEDS

DEFRAUDING AMERICA, 560 pages of federal corruption, authored by a government insider, assisted by a group of concerned deep-cover CIA and DEA personnel. Heavily documented, exposing criminality in October Surprise, INSLAW, HUD and S&L, Chapter 11 and much more, including assassinations and prosecution of whistleblowers. \$27.50 postpaid. 1-800-247-7389 or Box 5, Alamo, CA 94507.

REQUIRED READING: KATHARINE THE GREAT. Katharine Graham and her Washing

ton *Post Empire* by Deborah Davis. The updated edition from Sheridan Square Press takes the reader beyond Watergate to Contragate, into the Reagan-Bush years. This is the book that names "Deep Throat," details the CIA connections of longtime *Post* editor Ben Bradlee, and describes the vast influence of Katharine Graham, perhaps the most powerful woman in America. \$24.95 hardcover; paperback, \$14.95. At bookstores or order from Sheridan Square Press, 145 West 4th Street, New York NY 10012. Add \$2.00 for postage and handling. (\$4.00 for foreign surface, \$7.00 for foreign airmail).

CIA BASE: This IBM compatible system allows the user to search every published reference to

the CIA since 1947 in over 240 books and US government documents. Designed by former CIA officer Ralph McGehee, the system allows search by word, topic, country, date or combinations thereof. \$99.00. CIA Base, PO Box 5022, Hemdon VA 22070.

HARASSMENT RACKET run by private sector police organizations—security firms and detective agencies; seeking investigators knowledgeable about this and victims of harassment, especially "the Game." Ex-investigator for environmental organization would like to work with such people in the LA and NYC areas. Write RMS, 336 Roswell Avenue, Long Beach CA 90814. Unclassified Classifieds.

FOR YOUR INFORMATION

September 3, 1993

CENSORED

TIPS

Project Censored often receives tips and suggestions about issues that investigative journalists might be interested in. While we do not have the resources to investigate and verify these suggestions, we feel that they should be passed along to media outlets and journalists who may be interested in investigating them. When available, the original sources are cited. With the support of grants from the C.S. Fund, The Body Shop, and The John D. and Catherine T. MacArthur Foundation, this information is provided as a public service in a continuing effort by Project Censored on behalf of the public's right to know. Following is a tip you might be interested in investigating.

ANOTHER MYSTERIOUS DEATH OF INSLAW INVESTIGATOR

Paul Wilcher, an independent investigator into questionable governmental activities, including the October Surprise issue and the INSLAW case, was found dead on June 23, 1993, under circumstances eerily similar to those of Danny Casolaro. The enclosed information about this TIP was sent to Project Censored by Mr. Julian C. Holmes, of Wayne, Maine, a longtime CENSORED source. The primary source of background information on this is Mr. Garby Leon, a writer with Columbia Pictures. Enclosed is a copy of a letter by Mr. Leon to Attorney General Janet Reno seeking her inquiry into the case. White House correspondent Sarah McClendon also apparently is a potential source as noted by Mr. Leon in the enclosed.

For more information, contact:

Garby Leon, whose address is noted on the attached letter, also cites a number of other sources, including their addresses and phone numbers.

Columbia Pictures
Thalberg 1319
10202 W. Washington Blvd.
Culver City CA 90232
July 14, 1993

The Honorable Janet Reno
Attorney General of the United States
Department of Justice - Room 4400
Tenth and Constitution Ave N.E.
Washington DC 20530

Dear Madame Attorney General,

I am writing because I feel the death of Paul Wilcher deserves your most serious attention, and should be investigated by your most trusted officials in the Department of Justice.

Paul Wilcher, like Danny Casolaro, was investigating possible government involvement in a variety of questionable activities, including the controversial October Surprise allegations and the INSLAW case, his researches leading him into areas that Casolaro had covered earlier. In his quest Wilcher made himself known in and around Capitol Hill as a persistent gadfly, trying to spur inquiries into possible government malfeasance in several areas. He had contacts with, among others, Lee Hamilton, William Webster, Elliot Richardson and Ross Perot.

By late May, Wilcher said his information had gone beyond Casolaro's, and he felt this made him a 'danger signal.' In three weeks, he was dead.

I feel that the two deaths, Casolaro's and Wilcher's, offer disturbing parallels, outlined below.

On the 23rd of June, 1993, the body of Paul Wilcher was discovered in his Washington DC apartment. This is not a certainty, since to my knowledge no evidentiary identification -- no fingerprint or dental x-ray matching -- was made before the body's reported cremation two weeks ago.

Present at the scene after Wilcher's death was noted White House correspondent Sarah McClendon, who knew Wilcher well and who had alerted authorities that he was missing. McClendon was unable to identify the body as Wilcher after viewing the remains.

McClendon has been told that preliminary autopsy results have found "no natural cause of death, and no other cause of death" to explain Wilcher's demise. Given that Wilcher, in his 40's, was in apparent good health, this seems fairly astonishing.

A much larger issue is also implied here: if critics of our government are found dead in their bathrooms from obscure causes, and the government itself doesn't take steps to find out why, then our freedoms themselves are threatened -- as well as the activities that protect those freedoms.

If individual investigation and criticism of government activities is chilled or intimidated into silence, then democracy loses its most important protection.

To put it another way, if Danny Casolaro's death was a 'message' of some kind, then Wilcher's death is an even grimmer message -- it suggests that Casolaro's death was not a fluke. Anyone inspired to follow Casolaro or Wilcher's path now has a strong added reason to fear doing so.

And a real investigation into Wilcher's death might not be an academic exercise. One person who is extremely close to and knowledgeable about the Casolaro case, has said in private that the mystery of Casolaro's death could be resolved by a Grand Jury investigation, with sworn testimony, subpoena power, etc. This suggests Paul Wilcher's death may not have to remain a mystery either.

Paul Wilcher was an acquaintance of mine. He was not a perfect person; he made mistakes like anyone else but he was also, at times, a man of unusual energy and altruism. A seminary student who considered becoming a priest, he later became an attorney in his efforts to accomplish some good in this world.

Overall, I feel he was a good man. He didn't deserve to die.

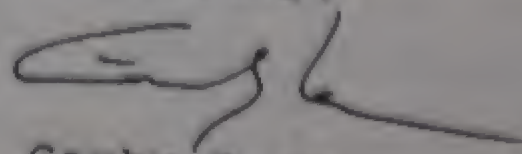
Personally, I don't believe he died of natural causes.

*

In the following pages are brief remarks regarding A) disturbing parallels between the Casolaro and Wilcher cases; B) Police, FBI and CIA presence at the scene; C) other information about Wilcher's death; and D) possible further forensic investigation.

Mme. Attorney General, I feel the death of Paul Wilcher offers too many questions and inconsistencies to be ignored. I am writing because I feel this matter deserves your most serious attention, and hope this letter will bring some action on your part to answer some of the many, very troubling questions raised by Paul Wilcher's death.

Sincerely,



Garby Leon
(PhD, Harvard University)

ASTURBING PARALLELS BETWEEN THE WILCHER & CASOLARO CASES:

- Both were investigating possible government involvement in illegal activities.

- Each was acting on his own, with dogged persistence, over a long time period.

-- Both Casolaro and Wilcher expressed fears, shortly before their deaths, that their lives were in danger because their investigations had led into sensitive territory. Casolaro was known to have received direct phone call threats, and told his brother shortly before he died, "If something happens to me, it won't be an accident."

As stated, Wilcher told at least one other person at the end of May that he feared he'd become a "danger signal" because his information on government malfeasance had gone beyond Casolaro's. In three weeks he was dead.

- Both decedents' bodies were found in bathrooms, in bizarre circumstances (Casolaro a supposed 'suicide' though forensic evidence cast substantial doubt on this; Wilcher, a man in good health, propped up on a toilet but showing no discernible cause of death).

- In both cases, the scene of death was sealed off and made inaccessible, then cleaned, preventing any further official or independent investigation. (the motel room where Casolaro was found was industrially cleaned the next day; Wilcher's apartment was sealed off and no one was allowed to enter; it was also cleaned the next day. I am unaware of any subsequent, serious investigation or crime report released to the public in either case).

- In both cases, personal records, documents, computer files and/or other information belonging to the decedents are apparently not officially accounted for. Casolaro's briefcase and personal records were not found at the scene of his death. While Wilcher's family reportedly has taken possession of some personal belongings, the location of Wilcher's complete files, the result of years of hard work, is not publicly known.

- in both cases, rapid alterations were made to the corpse making further forensic study difficult or impossible. Casolaro was embalmed shortly after death without family consent; Wilcher was cremated, as remarked above, without fingerprint or other evidential identification of the body, and without complete forensic examination to determine cause of death.

- In both cases, forensic evidence relating to the corpses is scant.

- In neither case was any kind of inquest held, no official testimony taken under oath, nor was any thoroughgoing official investigation undertaken (at least publicly). Nor, has any official report been released in either case.

POLICE, FBI & CIA PRESENCE AT THE SCENE, JUNE 23rd, 1993:

According to Mr. MASON O. LIDELL JR. (637 Third St. NE, Apt. B-03, DC 20002) superintendent of Wilcher's building, a Lieutenant and a Sergeant from the D.C. Police (with the help of firemen to force the door) entered Wilcher's apartment at about 11:30 AM on June 23rd. Three detectives from DC Police entered and found Wilcher's computer was turned on. When they read what was on the computer screen, they summoned the FBI. There is no further information on what the screen actually said.

After entering the apartment and getting a brief glance at the body and the apartment, Lidell was ordered to leave. The apartment was sealed off for the rest of the day, except for official personnel. The body was removed at about 12:30 according to Lidell (who didn't witness this), though he did mention that when he entered the apartment later, there was blood on the floor and on the commode which wasn't present earlier. He was told that this was because of measures taken to move the body.

At about 4:30 in the afternoon, FBI Agents arrived. Sarah McClendon was also present, though not allowed in the apartment itself. She says two groups of four FBI Agents -- eight FBI agents in all -- arrived and asked questions. McClendon checked their identification, which seemed convincing. According to Lidell at least three FBI Agents entered the apartment during the 4:30 to 7:30 time period.

Then, according to Lidell, one man appeared and said he was CIA (without offering identification). He joined the FBI agents in the Wilcher apartment during the 4:30 to 7:30 time period. More people could have entered during this time, Lidell says -- he returned to his own apartment and didn't keep track.

Lidell says that an NBC camera crew was prevented from entering the apartment. Aside from firemen, medical personnel to remove the body and the above Government agents, no one was allowed in the apartment for the entire day -- no reporters, friends, media crews, etc. This raises a question: why no other observers, since police okayed cleaning of the apartment the very next day?

Ms. McClendon phoned the FBI to ask about the presence of FBI Agents; later MR. JAMES V. DESARNO JR., Assistant Special Agent in Charge from the D.C. Metropolitan Office, arrived. Mr. Desarno also asked questions, but strongly denied that the FBI was interested in or involved in the case. "We are not interested in this case," he told McClendon, Lidell and others, repeatedly.

This seems curious. If Wilcher was a 'nobody,' why the official presence and vehement expression of non-involvement -- ironic with so many agents present? How could Desarno know the FBI would or wouldn't be involved without an investigation or known cause of death? Why all the secrecy and denial? Why the presence of the CIA?

OTHER INFORMATION
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OTHER INFORMATION ABOUT WILCHER'S DEATH:

Only a few slight pieces of information have filtered down about public officials and others involved in the Wilcher matter:

-- Two FBI Agents present at the scene were JAMES V. DESARNO, as remarked, and CRAIG OLSON, both of the D.C. Metropolitan Office: 1900 Half Street SW, Wash DC 20535. (202) 252-7801, both at same address and office.

-- The DC police officer in charge of investigating the Wilcher death is named BRIAN HENRY, (202) 727-4347.

-- Coroner for the government is a DR. KIM, who performed the autopsy, the results of which have not been released.

-- Building superintendent MASON LIDELL (202-543-2751), was questioned by Desarno and others, and has kindly provided information in this letter.

-- One friend of Wilcher's phoned apartment 302 in Wilcher's building (across from his) and got a taped answer message on the telephone intercom. The message said (paraphrasing) "This is a government telephone line, no longer in service," or words to that effect. Phone records, occupancy, etc. from this address should be investigated.

*

POSSIBLE FURTHER FORENSIC INVESTIGATION:

Given the inconclusive autopsy results, further testing of the forensic evidence would seem to be crucial. Wilcher's body fluids, sent by the D.C. Medical Examiner to the Armed Forces Institute of Pathology at Walter Reede Hospital, haven't yielded any clue as to cause of death. Apparently coroner Dr. Kim is still in possession of Wilcher's heart.

Sarah McClendon is petitioning Dr. JOYE CARTER of the D.C. Medical Examiner's office to submit this forensic evidence for further study. Dr. Carter hasn't moved with alacrity to permit or facilitate this.

McClendon would like to submit the evidence to a DR. MASON, one of the top forensic toxicologists in the U.S. (Dr. Mason: 2300 Stratford Ave, Willow Grove, Pennsylvania. 215-657-4900). Dr. Mason feels it is extremely significant that no cause of death has been found, a rarity in his experience.

*

Perhaps, Mme. Attorney General, you can aid in investigating this and other crucial aspects of Paul Wilcher's death. Thank you for any consideration in response to this request. -- G. Leon.

(Garby Leon: born New York City, B.A. Marlboro College; M.A., PhD Harvard University; conscientious objector during the Vietnam war and active in the antiwar movement; currently lives in Los Angeles and works in the movie industry. Frequent phone & mail correspondent with Paul Wilcher).

THE INSLAW AFFAIR

INVESTIGATIVE REPORT

BY THE

COMMITTEE ON THE JUDICIARY

together with

DISSENTING AND SEPARATE DISSENTING VIEWS



SEPTEMBER 10, 1992.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1992

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EDMO

RAPHAEL PUMP

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Hon. THOMAS
Speaker of the
Washington, D.C.

DEAR MR.
Judiciary, I
INSLAW Affair

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, September 10, 1992.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on the
Judiciary, I submit herewith an investigative report entitled "The
INSLAW Affair."

JACK BROOKS, *Chairman.*

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called the Institute for Law and Social Research) was a nonprofit corporation funded almost entirely through Government grants and contracts. When President Carter terminated the LEAA, INSLAW converted the company to a for-profit corporation in 1981 to commercially market PROMIS. The new corporation made several significant improvements to the original PROMIS software and the resulting product came to be known as INSLAW's proprietary Enhanced PROMIS. The original PROMIS was funded entirely with Government funds and was in the public domain.

In March 1982, the Justice Department awarded INSLAW, Inc., a \$10 million, 3-year contract to implement the public domain version of PROMIS at 94 U.S. attorneys' offices across the country and U.S. Territories. While the PROMIS software could have gone a long way toward correcting the Department's longstanding need for a standardized case management system, the contract between INSLAW and Justice quickly became embroiled in bitterness and controversy which has lasted for almost a decade. The conflict centers on the question of whether INSLAW has ownership of its privately funded "Enhanced PROMIS." This software was eventually installed at numerous U.S. attorneys' offices after a 1983 modification to the contract. While Justice officials at the time recognized INSLAW's proprietary rights to any privately funded enhancements to the original public domain version of PROMIS, the Department later claimed that it had unlimited rights to all software supplied under the contract. (See section of report entitled, "The Department Misappropriated INSLAW Software.")

INSLAW attempted to resolve the matter several times but was largely met with indifference or hostility by Department officials. Eventually, the Department canceled part of the contract and, by February 1985, had withheld at least \$1.6 million in payments. As a result, the company was driven to the brink of insolvency and was threatened with dissolution under chapter 7 of the bankruptcy laws. Department officials have steadfastly claimed the INSLAW controversy is merely a contract dispute which has been blown out of proportion by the media. INSLAW's owners, William and Nancy Hamilton, however, have persisted in their belief that the Department's actions were part of a high level conspiracy within Justice to steal the Enhanced PROMIS software.

A. INSLAW ALLEGATIONS

Based on their knowledge and belief, the Hamiltons have alleged that high level officials in the Department of Justice conspired to steal the Enhanced PROMIS software system. As an element of this theft, these officials, who included former Attorney General Edwin Meese and Deputy Attorney General Lowell Jensen, forced INSLAW into bankruptcy by intentionally creating a sham contract dispute over the terms and conditions of the contract which led to the withholding of payments due INSLAW by the Department. The Hamiltons maintain that, after driving the company into bankruptcy, Justice officials attempted to force the conversion of INSLAW's bankruptcy status from Chapter 11: Reorganization to Chapter 7: Liquidation. They assert that such a change in bankruptcy status would have resulted in the forced sale of INSLAW's assets, including Enhanced PROMIS to a rival computer company

called Hadron, Inc., which, at the time, was attempting to conduct a hostile buyout of INSLAW. Hadron, Inc., was controlled by the Biotech Capital Corporation, under the control of Dr. Earl Brian, who was president and chairman of the corporation. The Hamiltons assert that even though the attempt to change the status of INSLAW's bankruptcy was unsuccessful, the Enhanced PROMIS software system was eventually provided to Dr. Brian by individuals from the Department with the knowledge and concurrence of then Attorney General Meese who had previously worked with Dr. Brian in the cabinet of California Governor Ronald Reagan and later at the Reagan White House. According to the Hamiltons, the ultimate goal of the conspiracy was to position Hadron and the other companies owned or controlled by Dr. Brian to take advantage of the nearly 3 billion dollars' worth of automated data processing upgrade contracts planned to be awarded by the Department of Justice during the 1980's.

Information obtained by the Hamiltons through sworn affidavits of several individuals, including Ari Ben-Menashe, a former Israeli Mossad officer, and Michael Riconosciuto, an individual who claims to have ties to the intelligence community, indicated that an element of this ongoing criminal enterprise by Mr. Meese, Dr. Brian and others included the modification of the Enhanced PROMIS software by individuals associated with the world of covert intelligence operations. The Hamiltons claim the modification of Enhanced PROMIS was an essential element of the enterprise, because the software was subsequently distributed by Dr. Brian to intelligence agencies internationally with a "back door" software routine, so that U.S. intelligence agencies could covertly break into the system when needed. The Hamiltons also presented information indicating that PROMIS had been distributed to several Federal agencies, including the FBI, CIA, and DEA.

B. COMMITTEE INVESTIGATION

Due to the complexity and breadth of the INSLAW allegations against the Department of Justice, the committee's investigation focused on two principal questions: (1) Did high level Department officials convert, steal or otherwise misappropriate INSLAW's PROMIS software and attempt to put the company out of business; and, (2) did high level Department of Justice officials, including Attorney General Edwin Meese and then Deputy Attorney General Lowell Jensen, and others conspire to sell, transfer, or in any way distribute INSLAW's Enhanced PROMIS to other Federal agencies and foreign governments?

1. DID THE DEPARTMENT CONVERT, STEAL OR MISAPPROPRIATE THE PROMIS SOFTWARE?

With regard to the first question, there appears to be strong evidence, as indicated by the findings in two Federal court proceedings as well as by the committee investigation, that the Department of Justice "acted willfully and fraudulently,"² and "took, con-

²INSLAW, Inc. v. United States, opinion of U.S. District Court Judge William Bryant, at p. 52a.

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² INSLAW, Inc., v. United States, opinion of U.S. District Court Judge William Bryant, at p. 52a.

verted and stole."¹ INSLAW's Enhanced PROMIS by "trickery, fraud and deceit."² It appears that these actions against INSLAW were implemented through the project manager from the beginning of the contract and under the direction of high level Justice Department officials.

Just 1 month after the contract was signed, Mr. C. Madison "Brick" Brewer, the PROMIS project manager, raised the possibility of canceling the INSLAW contract. During an April 14, 1982, meeting of the PROMIS Project Team, Mr. Brewer, and others discussed terminating the contract with INSLAW for convenience of the Government. Mr. Brewer did not recall the details of the meeting but said that if this recommendation was made, it was made "in jest."³ Based on notes taken at this meeting by Justice officials, Bankruptcy Court Judge George Bason found that Mr. Brewer's recommendation to terminate the INSLAW contract, "... constituted a smoking gun that clearly evidences Brewer's intense bias against INSLAW, his single-minded intent to drive INSLAW out of business...."⁴ By his own admission, Mr. Brewer became upset when INSLAW claimed that it had made enhancements to the public domain version of PROMIS using private funds. In his view, under the contract all versions of PROMIS were the Government's property. It is clear from the record that Mr. Brewer and Mr. Videnieks (the PROMIS contracting officer), supported by high level Justice officials continued to confront INSLAW at every turn. As Senior District Court Judge Bryant stated in his ruling on the case: "There was unending contention about payments under this contract and the rights of the respective parties."

Over the life of the contract, INSLAW made several attempts to reach an agreement with the Department over its proprietary rights to the Enhanced PROMIS software. The Department, however, steadfastly refused to conduct any meaningful negotiations and exhibited little inclination to resolve the controversy. In the meantime, INSLAW was pushed to the brink of financial ruin because the Department withheld at least \$1.6 million in critical contract payments on questionable grounds, and in February 1985 was forced to file for protection under chapter 11 of the Bankruptcy Code in order to stay economically viable. INSLAW at this time had installed PROMIS at the 20 largest U.S. attorneys' offices across the country as required by the contract.⁵ The Department had earlier canceled installation of PROMIS at the 74 smaller offices.

While refusing to engage in good faith negotiations with INSLAW, Mr. Brewer and Mr. Videnieks, with the approval of high level Justice Department officials, proceeded to take actions to misappropriate the Enhanced PROMIS software. These officials knew that INSLAW had installed Enhanced PROMIS at the 20 sites. Yet, without notice, and certainly without permission, the Depart-

¹INSLAW, Inc., v. United States, Ch 11, Case No. 85-00070, Adv. No. 86-00069, transcript of oral decision at 9 (Bankr. D.D.C. September 28, 1987).

²INSLAW, Inc., v. United States, 83 B.R. 89 (Bktry. D. Dist. Col. 1988) at 158 (Finding 399).

³Second statement of C. Madison Brewer, in the matter of: Office of Professional Responsibility Investigation No. 88-0137, June 29, 1988, p. 35.

⁴INSLAW, Inc., v. United States, 83 B.R. 89 (Bktry. D. Dist. Col. 1988) at 123 (Finding 165).

⁵There were two additional sites (Southern District of California and District of New Jersey) which were used as pilot sites prior to the award of the March 1987 contract to INSLAW.

ment of Justice illegally copied INSLAW's Enhanced PROMIS software and installed it eventually at 25 additional U.S. attorneys' offices. The Department reportedly also brought another 31 U.S. attorneys' offices "on-line" to Enhanced PROMIS systems via telecommunications. INSLAW first learned of these unauthorized actions in September 1985, and notified the Department that it must remove the Enhanced PROMIS software or arrange for license agreements. When the Department refused, INSLAW subsequently filed a claim against Justice in the Federal Bankruptcy Court which eventually led to the Bankruptcy Court's finding that the Department's actions "... were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons... to drive INSLAW out of business and to convert, by trickery, fraud and deceit, INSLAW's PROMIS software." When the case was appealed by the Department, Senior District Court Judge William Bryant concurred with the Bankruptcy Court and was very critical of the Department's handling of the case. In his ruling, at 49a, Judge Bryant stated:

The Government accuses the bankruptcy court of looking beyond the bankruptcy proceeding to find culpability by the Government. What is strikingly apparent from the testimony and depositions of key witnesses and many documents is that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work. [Emphasis added.]

Recently, the posture of some Department officials has been to attempt to exonerate the Department's handling of the INSLAW matter by citing the fact that the Court of Appeals has vacated the Bankruptcy and District Courts' judgment involving illegal misconduct of the Department including violations of the automatic stay provisions of the Bankruptcy Code. However, the D.C. Circuit's opinion was grounded primarily on jurisdictional questions and did not address the substantive merits of the findings of fact and conclusions of law of either the Bankruptcy Court or the ruling of the U.S. District Court.

Based on the facts presented in court and the committee's review of Department records, it does indeed appear that Justice officials, including Mr. Brewer and Mr. Videnieks, never intended to fully honor the proprietary rights of INSLAW or bargain in good faith with the company. The Bankruptcy Court found that:

...[The Department] engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing. [Finding No. 266 at 138.]

As the Bankruptcy and District Courts found on the merits, it is very unlikely that Mr. Brewer and Mr. Videnieks acted alone to violate the proprietary rights of INSLAW in this matter. In explaining his own actions, Mr. Brewer, the project manager, has repeatedly stated that he was not acting out any personal vendetta against INSLAW and that high level Department officials including Lowell Jensen were aware of every decision he made with regard to the contract. Mr. Brewer stated, under oath that "...there was

somebody in the Department at a higher level, looking over the shoulder of not just me but the people who worked for me...⁸ The PROMIS Oversight Committee, headed by Deputy Attorney General Lowell Jensen, kept a close watch over the administration of the contract and was involved in every major decision. Mr. Jensen, who worked with former Attorney General Edwin Meese in the Alameda County district attorneys' offices, stated under oath that he kept the Attorney General regularly informed of all aspects of the INSLAW contract. The PROMIS Oversight Committee readily agreed with Mr. Brewer's recommendation to cancel part of INSLAW's contract for default because of the controversy regarding the installation of PROMIS in word processing systems at the 74 smaller U.S. attorneys' offices. Mr. Brewer's proposal was ultimately rejected only because a Justice contracts attorney advised the oversight committee that the Department did not have the legal authority to do so. Curiously, the recommendation to find INSLAW in default occurred shortly after INSLAW and the Department signed a modification to the contract (Mod. 12), which was supposed to end the conflict over proprietary rights.

Mr. Jensen, who is currently a Federal District Court judge in San Francisco, served at the Justice Department successively as Assistant Attorney General in charge of the Criminal Division, Associate Attorney General and Deputy Attorney General between 1981 and 1986. The Bankruptcy Court found that he "had a previously developed negative attitude about PROMIS and INSLAW" from the beginning (Findings No. 307-309) because he had been associated with the development of a rival case management system while he was a district attorney in California, and that this experience, at the very least, affected his judgment throughout his oversight of the contract. During a sworn statement, Judge Jensen denied being biased against INSLAW, but averred that he did not have complete recollection of the events surrounding his involvement in the contract. However, based on the committee's own investigation it is clear that Judge Jensen was not particularly interested or active in pursuing INSLAW's claims that Department officials were biased against the company and had taken action to harm the company. Perhaps most disturbing, he remembered very few details of the PROMIS Oversight Committee meetings even though he had served as its chairman and was certainly one of its most influential members. He stated that after a meeting with former Attorney General Elliot Richardson (representing INSLAW) regarding the alleged Brewer bias, he commissioned his deputy, Mr. Jay Stephens, to conduct an investigation of the bias charges. Based on this investigation, Judge Jensen said he concluded that there were no bias problems associated with the Department's handling of the INSLAW contract.

This assertion, however, contradicted Mr. Stephens, who testified during a sworn statement that he was never asked by Judge Jensen to conduct an investigation of the Brewer bias allegations raised by Mr. Richardson and others. Mr. Stephens' recollection of the events was sharp and complete in stark contrast to Judge Jensen's. As a result, many questions remain about the accuracy and

⁸ INSLAW, Inc. v. United States, 83 B.R. 90 (S.D. Cal. 1986), p. 17.

completeness of Judge Jensen's recollections and statements. As for the PROMIS Oversight Committee, committee investigators were told that detailed minutes were not kept at any of the meetings, nor was there any record of specific discussions by its members affecting the INSLAW contract. The records that were available were inordinately sparse and often did not include any background of how and why decisions were made.

To date, former Attorney General Meese denies having knowledge of any bias against INSLAW by the Department or any of its officials. He stated, under oath, that he had little, if any, involvement with the INSLAW controversy and that he recalls no specific discussion with anyone, including Department officials about INSLAW's contract with Justice regarding the use or misuse of the PROMIS software. This statement is in direct conflict with Judge Jensen's testimony, that he briefed Mr. Meese regularly on this issue and that Mr. Meese was very interested in the details of the contract and negotiations.

One of the most damaging statements received by the committee is a sworn statement made by Deputy Attorney General Arnold Burns to Office of Professional Responsibility (OPR) investigators in 1988. In this statement, Mr. Burns stated that Department attorneys had already advised him (sometime in 1986) that INSLAW's claim of proprietary rights in the Enhanced PROMIS software was legitimate and that the Department had waived any rights in these enhancements. Mr. Burns was also told by Justice attorneys that the Department would probably lose the case in court on this issue. Accepting this statement, it is incredible that the Department, having made this determination, would continue to pursue its litigation of these matters. More than \$1 million has been spent in litigation on this case by the Justice Department even though it knew in 1986 that it did not have a chance to win the case on merits. This clearly raises the specter that the Department actions taken against INSLAW in this matter represent an abuse of power of shameful proportions.

2. WAS THERE A HIGH LEVEL CONSPIRACY?

The second phase of the committee's investigation concentrated on the allegations that high level officials at the Department of Justice conspired to drive INSLAW into insolvency and steal the PROMIS software so it could be used by Dr. Earl Brian, a former associate and friend of then Attorney General Edwin Meese. Dr. Brian is a businessman and entrepreneur who owns or controls several businesses including Hadron, Inc., which has contracts with the Justice Department, CIA, and other agencies. The Hamiltons and others have asserted that Dr. Brian conspired with high level Justice officials to sell PROMIS to law enforcement and intelligence agencies worldwide.

Former Attorney General Elliot Richardson, counsel to INSLAW, has alleged that the circumstances involving the theft of the PROMIS software system constitute a possible criminal conspiracy involving Mr. Meese, Judge Jensen, Dr. Brian, and several current and former officials at the Department of Justice. Mr. Richardson maintains that the individuals involved in the theft of the Enhanced PROMIS system have violated a plethora of Federal crimi-

statutes, including but not limited to: (1) 18 U.S.C. 654 (officer or employee of the United States converting the property of another); (2) 18 U.S.C. 1001 (false statements); (3) 18 U.S.C. 1621 (perjury); (4) 18 U.S.C. 1503 (obstruction of justice); (5) 18 U.S.C. 1341 (mail fraud) and (6) 18 U.S.C. 371 (conspiracy to commit criminal offenses). Mr. Richardson further contends that the violations of Federal law associated in the theft of Enhanced PROMIS, the subsequent coverup and the illegal distribution of PROMIS fulfill the requirements for prosecution under 18 U.S.C. 1961 et seq. (the Racketeer Influenced and Corrupt Organizations—(RICO)—statute).

As discussed earlier, the committee's investigation largely supports the findings of two Federal courts that the Department "took, converted, stole" INSLAW's Enhanced PROMIS by "trickery, fraud and deceit," and that this misappropriation involved officials at the highest levels of the Department of Justice. The recent ruling by the D.C. Circuit Court of Appeals does nothing to vitiate those conclusions, the product of an extensive record compiled under oath by two Federal jurists. While the Department continues to attempt to explain away the INSLAW matter as a simple contract dispute, the committee's investigation has uncovered other information which plausibly could suggest a different conclusion if full access to documents and other witnesses were permitted. Several individuals have stated under oath that the Enhanced PROMIS software was stolen and distributed internationally in order to provide financial gain to Dr. Brian and to further intelligence and foreign policy objectives for the United States. While it should be acknowledged at the outset that some of the testimony comes from individuals whose past associations and enterprises are not commendable, corroborating evidence for a number of their claims made under oath has been found. It should be observed that these individuals provided testimony with the full knowledge that the Justice Department could—and would probably be strongly inclined to—prosecute them for perjury if they lied under oath. Moreover, we note that the Department is hardly in a position to negate summarily testimony offered by witnesses who have led less than an exemplary life in their choice of associations and activities. As indicated by the recent prosecution of Manuel Noriega, which involved the use of over 40 witnesses, the majority of whom were previously convicted drug traffickers, a witness' perceived credibility is not always indicative of the accuracy or usability in court of the information provided. Although the committee's investigation could not reach a definitive conclusion regarding a possible motive behind the misappropriation of the Enhanced PROMIS software, the disturbing questions raised, unexplained coincidences and peculiar events that have surfaced throughout the INSLAW case raises the need for further investigation.

One area which requires further investigation is the allegations made by Mr. Michael Riconosciuto. Mr. Riconosciuto, a shady character allegedly tied to U.S. intelligence agencies and recently convicted on drug charges, alleges that Dr. Brian and Mr. Peter Videnieks secretly delivered INSLAW's Enhanced PROMIS software to the Cabazon Indian Reservation, located in California, for "refueling" for use by intelligence agencies in the United States and

abroad.⁸ When Dr. Brian met Mr. Riconosciuto and Cabazon Indian Reservation

C. At

Suspensions of a Department of Justice Investigative writer inquiring hotel room in Martinsburg that he claimed was criminal body was found on August ous times. Following a by thorties, Mr. Casolaro's tion was reopened later as Casolaro's brother and cumstances surrounding

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Based on the evidence the path followed by Dr into the INSLAW matter dangerous individuals a world of covert intelligence cumstances surrounding professionals and others been a suicide. As for

⁸ Mr. Riconosciuto provided an account for the CIA and had several

abroad.⁹ When Dr. Brian was questioned about his alleged involvement in the INSLAW case, he denied under oath that he had ever met Mr. Riconosciuto and stated that he had never heard of the Cabazon Indian Reservation.

C. ADDITIONAL QUESTIONS

Suspicions of a Department of Justice conspiracy to steal INSLAW's PROMIS were fueled when Danny Casolaro—an investigative writer inquiring into those issues—was found dead in a hotel room in Martinsburg, WV, where he was to meet a source that he claimed was critical to his investigation. Mr. Casolaro's body was found on August 10, 1991, with his wrists slashed numerous times. Following a brief preliminary investigation by local authorities, Mr. Casolaro's death was ruled a suicide. The investigation was reopened later as a result of numerous inquiries from Mr. Casolaro's brother and others regarding the suspicious circumstances surrounding his death.

The Martinsburg Police investigation subsequently concluded in January 1992, that Mr. Casolaro's death was a suicide. Subsequently, Chairman Brooks directed committee investigators to obtain sworn statements from the FBI agent and two former Federal Organized Crime Strike Force prosecutors in Los Angeles who had information bearing on the Casolaro case. Sworn statements were obtained from former Federal prosecutors Richard Stavin and Marvin Rudnick on March 13 and 14, 1992. After initial resistance from the Bureau, a sworn statement was taken from FBI Special Agent Thomas Gates on March 25 and 26, 1992.

Special Agent Gates stated that Mr. Casolaro claimed he had found a link between the INSLAW matter, the activities taking place at the Cabazon Indian Reservation, and a Federal investigation in which Special Agent Gates had been involved regarding organized crime influence in the entertainment industry.

Special Agent Gates stated that Mr. Casolaro had several conversations with Mr. Robert Booth Nichols in the weeks preceding his death. Mr. Nichols, according to documents submitted to a Federal court by the FBI, has ties with organized crime and the world of covert intelligence operations. When he learned of Mr. Casolaro's death, Special Agent Gates contacted the Martinsburg, WV, Police Department to inform them of the information he had concerning Mr. Nichols and Mr. Casolaro. The Martinsburg Police have not commented on whether or not they eventually pursued the leads provided by Special Agent Gates.

Based on the evidence collected by the committee, it appears that the path followed by Danny Casolaro in pursuing his investigation into the INSLAW matter brought him in contact with a number of dangerous individuals associated with organized crime and the world of covert intelligence operations. The suspicious circumstances surrounding his death have led some law enforcement professionals and others to believe that his death may not have been a suicide. As long as the possibility exists that Danny

⁹Mr. Riconosciuto provided no affidavit to the Hamilton's stating that Mr. Valentich had worked for the CIA and had threatened him with retribution if he talked to committee investigators.

Casolaro died as a result of his investigation into the INSLAW matter, it is imperative that further investigation be conducted.

D. EVIDENCE OF POSSIBLE COVERUP AND OBSTRUCTION

One of the principal reasons the committee could not reach any definitive conclusion about INSLAW's allegations of a high criminal conspiracy at Justice was the lack of cooperation from the Department. Throughout the two INSLAW investigations, the Congress met with restrictions, delays and outright denials to requests for information and to unobstructed access to records and witnesses since 1988. The Department initially attempted to prevent the Senate Permanent Subcommittee on Investigations from conducting an investigation of the INSLAW affair. During this committee's investigation, Attorney General Thornburgh repeatedly reneged on agreements made with this committee to provide full and open access to information and witnesses. Although the day before a planned committee meeting to consider the issuance of a subpoena the Department promised full access to documents and witnesses, the committee was compelled to subpoena Attorney General Thornburgh to obtain documents needed to complete its investigation. Even then, the Department failed to provide all the documents subpoenaed, claiming that some of the documents held by the Department's chief attorney in charge of the INSLAW litigation had been misplaced or accidentally destroyed. The Department has not provided a complete accounting of the number of documents missing nor has it conducted an investigation to determine if the documents were stolen or illegally destroyed.

Questions regarding the Department's willingness and objectivity to investigate the charges of possible misconduct of Justice employees remain. That Justice officials may have too readily concluded that witnesses supporting the Department's position were credible while those who did not were ignored or retaliated against was, perhaps, most painfully demonstrated with the firing of Anthony Pasciuto, the former Deputy Director, Executive Office of the U.S. Trustees.

Mr. Pasciuto had informed the Hamiltons that soon after INSLAW filed for chapter 11 bankruptcy in 1985, the Justice Department had planned to petition the court to force INSLAW into chapter 7 bankruptcy and liquidate its assets including the PROMIS software. His source for this information was Judge Cornelius Blackshear who, at the time, was the U.S. Trustee for the Southern District of New York. Judge Blackshear subsequently provided INSLAW's attorneys with a sworn statement confirming what Mr. Pasciuto had told the Hamiltons. However, following a conversation with a Justice Department attorney who was representing the Department in the INSLAW case,¹⁰ Judge Blackshear recanted his earlier sworn statement. Moreover, Judge Blackshear, under oath, could not or would not provide committee investigators with a plausible explanation of why he had recanted

¹⁰In an October 26, 1988, FBI interview of James Garrity, Garrity (who was Judge Blackshear's attorney) stated that DOJ lawyer Dean Cooper had called him (Garrity) and said that Judge Blackshear's testimony was wrong and that DOJ was concerned that something should be done to correct it. Mr. Garrity informed Judge Blackshear of this information who later recanted his testimony. Mr. Garrity was an attorney with the Department at that time.

his earlier statements to INSLAW. Mr. Pasciuto and others regarding the Justice Department's efforts to force INSLAW out of business. He did confirm an earlier statement attributed to him that his recantation was a result of "his desire to hurt the least number of people." However, he would not elaborate on this enigmatic statement.

Similarly, Mr. Pasciuto, under strong pressure from senior Department officials, recanted his statement made to the Hamiltons regarding Judge Blackshear. It appears that Mr. Pasciuto may have been fired from his position with the Executive Office of U.S. Trustees because he had provided information to the Hamiltons and their attorneys which undercut the Department's litigating position before the Bankruptcy Court.¹¹ This action was based on a recommendation made by the Office of Professional Responsibility (OPR). In a memorandum to Deputy Attorney General Burns, dated December 18, 1987, the OPR concluded that:

In our view, but for Mr. Pasciuto's highly irresponsible actions, the department would be in a much better litigation posture than it presently finds itself. Mr. Pasciuto has wholly failed to comport himself in accordance with the standard of conduct expected of an official of his position.

Mr. Pasciuto now states he regrets having allowed himself to be coerced by the Department into recanting and has stated under oath to committee investigators that he stands by his earlier statements made to the Hamiltons that Judge Blackshear had informed him that the Department wanted to force INSLAW out of business. Certainly, Mr. Pasciuto's treatment by the Department during his participation in the INSLAW litigation raises serious questions of how far the Department will go to protect its interests while defending itself in litigation. Not unexpectedly, Mr. Pasciuto's firing had a chilling effect on other potential Department witnesses who might have otherwise cooperated with the committee in this matter. Judge Blackshear, on the other hand, was not accused of wrongdoing by the Department even though he originally provided essentially the same information as had Mr. Pasciuto.

Despite this series of obvious reversals, the Department, after limited investigation, has apparently satisfied itself that the sworn statements of its witnesses, including Judge Blackshear, have somehow been reconciled on key issues such that no false statements have been made by any of these individuals. This position is flatly in opposition to the Bankruptcy Court's finding that several Department officials may have perjured themselves which was never seriously investigated by the Department. In addition, there are serious conflicts and inconsistencies in sworn statements provided to the committee that have not been resolved. Equally important, the possibility that witnesses' testimony were manipulated by the Department in order to present a "united front" to the Congress and the public on the INSLAW case needs to be fully and honestly explored. The potential for a conflict of interest in the Department's

¹¹In a January 20, 1988, letter to Mr. Pasciuto from B. Boykin Rose, Associate Deputy Attorney General, Mr. Pasciuto was informed he was being terminated. Mr. Rose describes Mr. Pasciuto's providing information to the Hamiltons as "atrocious judgment."

Casolaro died as a result of his investigation into the INSLAW matter, it is imperative that further investigation be conducted.

D. EVIDENCE OF POSSIBLE COVERUP AND OBSTRUCTION

One of the principal reasons the committee could not reach any definitive conclusion about INSLAW's allegations of a high criminal conspiracy at Justice was the lack of cooperation from the Department. Throughout the two INSLAW investigations, the Congress met with restrictions, delays and outright denials to requests for information and to unobstructed access to records and witnesses since 1988. The Department initially attempted to prevent the Senate Permanent Subcommittee on Investigations from conducting an investigation of the INSLAW affair. During this committee's investigation, Attorney General Thornburgh repeatedly reneged on agreements made with this committee to provide full and open access to information and witnesses. Although the day before a planned committee meeting to consider the issuance of a subpoena the Department promised full access to documents and witnesses, the committee was compelled to subpoena Attorney General Thornburgh to obtain documents needed to complete its investigation. Even then, the Department failed to provide all the documents subpoenaed, claiming that some of the documents held by the Department's chief attorney in charge of the INSLAW litigation had been misplaced or accidentally destroyed. The Department has not provided a complete accounting of the number of documents missing nor has it conducted an investigation to determine if the documents were stolen or illegally destroyed.

Questions regarding the Department's willingness and objectivity to investigate the charges of possible misconduct of Justice employees remain. That Justice officials may have too readily concluded that witnesses supporting the Department's position were credible while those who did not were ignored or retaliated against was, perhaps, most painfully demonstrated with the firing of Anthony Pasciuto, the former Deputy Director, Executive Office of the U.S. Trustees.

Mr. Pasciuto had informed the Hamiltons that soon after INSLAW filed for chapter 11 bankruptcy in 1985, the Justice Department had planned to petition the court to force INSLAW into chapter 7 bankruptcy and liquidate its assets including the PROMIS software. His source for this information was Judge Cornelius Blackshear who, at the time, was the U.S. Trustee for the Southern District of New York. Judge Blackshear subsequently provided INSLAW's attorneys with a sworn statement confirming what Mr. Pasciuto had told the Hamiltons. However, following a conversation with a Justice Department attorney who was representing the Department in the INSLAW case,¹⁰ Judge Blackshear recanted his earlier sworn statement. Moreover, Judge Blackshear, under oath, could not or would not provide committee investigators with a plausible explanation of why he had recanted

¹⁰In an October 26, 1988, FBI interview of James Garrity, Garrity (who was Judge Blackshear's attorney) stated that DOJ lawyer Dean Cooper had called him (Garrity) and said that Judge Blackshear's testimony was wrong and that DOJ was concerned that something should be done to correct it. Mr. Garrity informed Judge Blackshear of this information who later recanted his testimony. Mr. Garrity was an attorney with the Department at that time.

his earlier statements to INSLAW, Mr. Pasciuto and others regarding the Justice Department's efforts to force INSLAW out of business. He did confirm an earlier statement attributed to him that his recantation was a result of "his desire to hurt the least number of people." However, he would not elaborate on this enigmatic statement.

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carrying out such an inquiry is high, if not prudently manifest, and independent scrutiny is required.

E. JUDGE BASON'S ALLEGATIONS AGAINST THE DEPARTMENT

Judge Bason testified, under oath, before the Economic and Commercial Law Subcommittee that the Department's actions against its critics may have extended into blocking his reappointment as a bankruptcy judge in 1988 because of his ruling in INSLAW's case. Judge Bason was replaced by Martin Teel, Jr., who, prior to his appointment, was a Justice Department attorney heavily involved in the Department's litigation of the INSLAW case.¹² The committee was unable to substantiate Judge Bason's charges. If such undue influence did occur, it was subtle and lost in the highly private manner in which judge selection procedures are conducted. While sworn statements were not taken, the committee investigators interviewed several of the judges involved in the selection process. The judges who agreed to provide interviews all stated that they had little firsthand knowledge in which to evaluate the candidates, including the incumbent judge. As a result, the members of the Judicial Council had to rely on the findings of the Merit Selection Panel headed by Judge Norma Johnson.

The Merit Selection Panel's findings were provided to the Judicial Council by Judge Johnson whose oral presentation was instrumental in the final selection. Judge Johnson had previously worked at the Department of Justice with Stuart Schiffer, who led the Department's attempt to have the District Court remove Judge Bason from the INSLAW case. Mr. Schiffer is also the official who argued vociferously against the appointment of an independent counsel on the INSLAW case in a memorandum to Deputy Attorney General Arthur Burns. Judge Johnson also served in the D.C. Superior Court with Judge Tim Murphy from 1970 through 1980. Judge Murphy subsequently worked directly for Mr. Brewer on the PROMIS contract. The committee, however, has not at this date found any evidence that Judge Johnson had specific discussions with Mr. Schiffer or anyone else at the Department of Justice about Judge Bason, the INSLAW case or the bankruptcy judicial selection process.

The committee's investigation revealed that the selection process was largely informal, undocumented and highly subjective. For example, several members of the Judicial Council indicated that one of the primary factors influencing the nonreappointment of Judge Bason, was the poor administrative condition of his court. These same members admitted that they had no firsthand knowledge of the administrative condition and based this opinion on the reports of the Merit Selection Panel and Judge Johnson. This was corroborated by the discovery of a confidential memorandum written by a member of the Merit Selection Panel which was highly critical of

¹² The procedures for the selection of a bankruptcy judge include: (1) Public notice of the vacancy; (2) applicants submit an application illustrating they meet the minimum qualifications to the merit process; (3) the applications are reviewed by a Merit Selection Panel, led by a district judge and appointed by the Judicial Council or council delegates; (4) the panel evaluates the applicants and selects the four most qualified candidates based on a review of applications and interviews of the applicants and interested parties; and (5) the selections are forwarded to the Judicial Council, which reviews the report of the panel and recommends at least three names to the Court of Appeals which makes the final selection.

Judge Bason and the administrative condition of the Bankruptcy Court. While this memorandum had been seen by several judges during the selection process, committee investigators were unable to determine who authored it. The committee's investigation did not reveal any evidence to support the criticisms raised in the memorandum. Martin Bloom, Clerk of the Bankruptcy Court, indicated in his sworn statement to committee investigators that under Judge Bason, the administrative condition of the court vastly improved. These sentiments were echoed by Chief Judge Aubrey Robinson who consistently complimented Judge Bason on his efforts to improve the administrative condition of the Bankruptcy Court in his remarks to the Annual Judicial Conference.

F. CONCLUSION

The history of the Department's behavior in the INSLAW case dramatically illustrates its (1) reflexive hostility and "circle the wagons" approach toward outside investigations; (2) inability or unwillingness to look objectively at charges of wrongdoing by high level Justice officials, particularly when the agency itself is a defendant in litigation; and, (3) belligerence toward Justice employees with views that run counter to those of the agency's upper management. The fact that the Department failed to recognize a need for an independent investigation of the INSLAW matter for more than 7 years is remarkable. Failure to do so has effectively shielded officials who may have committed wrongdoing from investigation and prosecution.

As already documented and confirmed by two Federal judges, the Department's actions in the INSLAW case have greatly harmed the company and its owners. These actions, as they pertain to the dispute with INSLAW over the misappropriation of the PROMIS software, were taken with the full knowledge and support of high level Justice officials. The harm to the company was further perpetuated by succeeding high level officials, such as former Attorney General Richard Thornburgh, who not only failed to objectively investigate the serious charges raised by the Hamiltons and their attorney, former Attorney General Elliot Richardson, but also delayed and rebuffed effective and expeditious outside investigation of the matter by Congress.

The Department of Justice is this nation's most visible guarantor of the notion that wrongdoing will be sought out and punished irrespective of the identity of the actors involved. Moreover, its mandate is to protect all private citizens from illegal activities that undermine the public trust. The Department's handling of the INSLAW case has seriously undermined its credibility and reputation in playing such a role. Congress and the executive must take immediate and forceful steps to restore public confidence and faith in our system of justice, which cannot be undermined by the very agent entrusted with enforcement of our laws and protections afforded every citizen. In view of the history surrounding the INSLAW affair and the serious implications of evidence presented by the Hamiltons, two court proceedings in the judicial branch and the committee's own investigation, there is a clear need for further investigation. The committee believes that the only way in which INSLAW's allegations can be adequately and fully investigated is

by the appointment of an independent counsel. The committee is aware that on November 13, 1991, Attorney General Barr appointed Nicholas Bua, a retired Federal judge from Chicago, as his special counsel to investigate and advise him on the INSLAW controversy. The committee eagerly awaits Judge Bua's findings; however, as long as the investigation of wrongdoing by former and current high level Justice officials remains under the ultimate control of the Department itself, there will always be serious doubt about the objectivity and thoroughness of the inquiry.

II. COMMITTEE INVESTIGATION, PRIOR STUDIES, HEARINGS AND SUBCOMMITTEE PROCEEDINGS

On December 5, 1990, Chairman Brooks convened a hearing of the Subcommittee on Economic and Commercial Law to review Attorney General Thornburgh's repeated refusal to provide the committee full and open access to all INSLAW documents and records. Representatives from the GAO, Mr. Steven R. Ross, the General Counsel to the Clerk of the U.S. House of Representatives (accompanied by Mr. Charles Tiefer, Deputy General Counsel, and Mr. Michael Long, Assistant Counsel), former Attorney General Elliot L. Richardson (of Milbank, Tweed, Hadley & McCloy), Mr. William and Mrs. Nancy Hamilton (INSLAW's corporate officers), and Judge George F. Bason testified at the hearing.¹³

Messrs. Richardson and Hamilton outlined their allegations of a criminal conspiracy in the Department's handling of the INSLAW contract and the theft of the Enhanced PROMIS software. Judge Bason testified that he believed that his failure to be reappointed as bankruptcy judge was the result of improper influence on the court selection process by the Justice Department because of his findings in favor of INSLAW in its bankruptcy proceedings. Mr. Ross refuted the Justice Department's rationale for withholding documents related to possible wrong doing by Justice officials involved with the INSLAW contract. GAO representatives described a wide range of deficiencies in the Department's Information Resources Management Office and its administration of the ADP contracts.

After the December 1990 hearing, the Attorney General once again vowed to cooperate with the committee. By June 1991 however, it was clear that the Department was not going to provide the committee with a substantial number of the documents that had been requested. As a result, Committee Chairman Brooks announced plans to address this and other issues related to INSLAW at the full committee hearings on the Department of Justice Authorization for Appropriations hearings scheduled for July 11 and 18, 1991.

On July 11, 1991, Congressman John Conyers, Jr., chairman of the Government Operations Committee; Congressman Frank Horton, the ranking minority member of that committee; and Congressman Robert Wise, Jr., chairman of the Subcommittee on Government Information, Justice, and Agriculture, testified before the committee. Also appearing before the committee were Mr. Steven

¹³ Hearing, House Judiciary Committee's Subcommittee on Economic and Commercial Law, June 5, 1990, Serial No. 114.

Ross, General Counsel to the Clerk of the U.S. House of Representatives; Charles Tiefer, Deputy General Counsel to the Clerk; and GAO officials: Milton Socolar, Richard Steiner, and Richard Fogel. The Attorney General, who was scheduled to appear before the committee on July 18, 1991, was asked to be prepared to provide an executive branch perspective on the interbranch conflicts over GAO and Judiciary Committee access to Department documents, and to discuss the INSLAW case.¹⁴

On July 18, 1991, the committee reconvened to review the Department's fiscal year 1992 authorization for appropriations request and to hear the testimony of Attorney General Thornburgh. However, according to the chairman, the Attorney General notified the committee the night before the hearing that he refused to attend on the grounds that the committee press release announcing the hearing had been unduly aggressive and contentious and not in keeping with the tenor of an oversight hearing. The chairman added that "the Attorney General seems to be objecting to a robust interchange of views that is an essential part of the give-and-take at the heart of the political process."

On July 25, 1991, the Subcommittee on Economic and Commercial Law met to authorize the issuance of two subpoenas to the Department of Justice; one for INSLAW documents and the other for a copy of an Office of Legal Counsel Opinion regarding FBI's authorized issuance of a subpoena by a vote of 10 to 6.¹⁵ On July 31, 1991, the Subcommittee on Economic and Commercial Law received most of the subpoenaed INSLAW documents from the Attorney General. The Department however, claimed that 51 documents or files were missing and could not be found.¹⁶ To date, the subcommittee has not received an adequate explanation from the Department on how the documents came to be missing.¹⁷

III. CONFLICTS BETWEEN THE DEPARTMENT AND INSLAW RESULT IN THE MISAPPROPRIATION OF INSLAW'S ENHANCED PROMIS

On November 2, 1981, the Department issued a request for proposals (RFP) for installing public domain PROMIS on minicomputers and word processors. Prior to the issuance of the RFP, several vendors, including INSLAW, advised the Department not to try to perform PROMIS functions on word processing equipment because the case management activities were computation-intensive and needed to be performed on full function microcomputers.¹⁸

One reason why such an approach was inherently flawed was because PROMIS involved over 500,000 lines of Common Business

¹⁴ House Judiciary Committee hearing, July 11, 1991, Serial No. 12, p. 3.

¹⁵ Statements of Chairman Jack Brooks before the Subcommittee on Economic and Commercial Law, "Meeting to Authorize Issuance of a Subpoena for Documents From the Department of Justice," July 25, 1991.

¹⁶ July 30, 1991, letter from Assistant Attorney General W. Leo Rawls to the Honorable Jack Brooks, Chairman, Committee on the Judiciary.

¹⁷ Statement of Chairman Jack Brooks before the Subcommittee on Economic and Commercial Law, "Meeting on the Return of Subpoenas," July 31, 1991.

¹⁸ INSLAW, Inc., v. United States of America and the U.S. Department of Justice, Findings of Fact and Conclusions of Law (Case No. 85-00070) Adversary Proceeding No. 86-0009, p. 59.

Oriented Language (COBOL) program code and required a very large-capacity computer at that time. INSLAW further advised the Department to move toward the use of full function microcomputers that could perform both case management and word processing. However, word processors remained in the Department's plan. Only 2 of the 104 firms that requested the RFP submitted proposals in the 30 days allowed—INSLAW and Systems Architects, Inc. INSLAW was selected for the contract since Systems Architects, Inc., was considered to be non-responsive to the RFP.¹⁹

Even before the contract was awarded, there was discussion between the Department and INSLAW over a period of 2 months on the subject of public domain software as opposed to privately funded enhancements. INSLAW was explicit in stating to the Department that its version of PROMIS had been enhanced with private funds and future enhancements funded outside the Department's contract were expected.²⁰

In March 1982, INSLAW was awarded a \$10 million, 3-year contract to install the public domain version of PROMIS on minicomputers in 20 large U.S. attorneys' offices and on word processors in 74 smaller offices. According to Judge Bryant, of the U.S. District Court for the District of Columbia, in commenting on the Department's appeal of the Bankruptcy Court's ruling:

... the contract sought proposal for (1) implementing the computerized "pilot version" of PROMIS as supplemented by the BJS (Bureau of Justice Statistics) enhancements in 20 "large" U.S. attorneys' offices; (2) creating and implementing a noncomputerized version of that software for word processors in the remaining U.S. attorneys' offices; and (3) providing necessary training, maintenance and support for 3 years.²¹

Shortly after receiving the contract to implement PROMIS at the 94 U.S. attorneys' offices, INSLAW's counsel sent a detailed letter to Mr. Stanley Morris, then an Associate Deputy Attorney General at the Department. This letter, with an attached memorandum written by Mr. Hamilton, notified the Department of INSLAW's intent to market an enhanced version of PROMIS as a fee-generating product to public and private sector customers.²² This claim to exclusive proprietary rights by INSLAW would naturally require the Department to pay INSLAW license fees if it chose to use Enhanced PROMIS. INSLAW based this claim on the fact that several non-Federal sources paid for continued funding of PROMIS' development and implementation.²³

¹⁹ Memorandum to the File from Mr. Peter Videnieks, Contracting Officer, Department of Justice, illegible date, pp. 1-2.

²⁰ Memorandum of the U.S. District Court for the District of Columbia concerning the pending appeal of the final judgment entered by the U.S. Bankruptcy Court in favor of INSLAW, November 22, 1981, p. 22a. Also see January 14, 1982, letter from Dr. Dean C. Merrill, INSLAW vice president, to Mr. Peter Videnieks, Department contracting officer, p. 6.

²¹ *Ibid.*, p. 21a.

²² Letter with attached memorandum to Mr. Stanley E. Morris, Associate Deputy Attorney General and a member of the PROMIS Oversight Committee, from Mr. Frederick M. Hills, Latham & Watkins, April 2, 1982.

²³ In a memorandum to INSLAW's counsel, an INSLAW employee stated that, during the period from May 1981 to May 1982 INSLAW developed a number of enhancements using over \$1 million of private funds and that no Federal funds were expended on these enhancements.

As detailed by the Bankruptcy Court in its chronology of events surrounding the INSLAW matter, Mr. C. Madison (Brick) Brewer had just assumed the departmental position of PROMIS project manager at the time of contract award. Mr. Brewer reacted negatively to INSLAW's efforts to protect its proprietary interest and in retaliation considered canceling the Department's contract with INSLAW just 1 month after it was initiated. A Department team meeting, including Messrs. Brewer, Videnieks (Justice Contracting Officer), and Rugh (Acting Assistant Director for Office of Management Information Systems Support—OMISS), was held on April 14, 1982, in Mr. Brewer's office to discuss Mr. Hamilton's "scurrilous"²⁴ memo. According to Mr. Videnieks' notes of the meeting:

Discussed INSLAW's "PROMIS II" memo... Termination for Convenience discussed.²⁵

Mr. Brewer apparently also discussed other reprisals against INSLAW on its other contracts with the Department.²⁶ However, when subsequently questioned in the course of litigation, there developed a severe memory loss with respect to the Department witnesses' recollection of this meeting, as noted by Judge Bason:

All of the DOJ witnesses who attended the April 14, 1982, meeting professed a total lack of memory about it. They testified they had no recollection of any such meeting. This court disbelieves that testimony. None of them could offer any credible explanation, or indeed any explanation, of the meaning of Videnieks' handwritten notes other than what this court finds to be their meaning in this Finding of Fact No. 165. These notes constitute a "smoking gun" that clearly evidences Brewer's intense bias against INSLAW, his single-minded intent to drive INSLAW out of business, and Rugh's and Videnieks' complicity.²⁷

In an apparent effort to respond to the concern raised by Department officials over whether the Department or INSLAW would own any enhancements to the PROMIS software, INSLAW's attorney, Mr. James Rogers, wrote on May 26, 1982, to Associate Deputy Attorney General, Stanley E. Morris. In this letter, Mr. Rogers provided a detailed description of what the company planned to do to market the software commercially, and asked that the Department respond to INSLAW to "ensure that these representations are correct." Mr. Rogers went on to explain:

[Y]ou expressed concern about the software itself, PROMIS 82, which INSLAW proposes to license to users for a fee commencing in June of 1982. We are prepared to make the following representations, which should alleviate the Department's concerns:

PROMIS 82 is the sum of only three parts:

Memorandum to Jim Rogers, Latham, Watkins & Hills, from Joyce Deroy, June 17, 1982, Exhibit 1.

²⁴ *INSLAW, Inc. v. United States*, 83 B.R. 89 (Bkcy. D. Dist. Col. 1988) at 123 (Finding 165).

²⁵ *Ibid.*, at 123 (Finding 165).

²⁶ Findings of Fact and Conclusions of Law, No. 165, at 84.

²⁷ *Ibid.*, at 84-85.

(1) the "Original PROMIS" memorandized as of May 15, 1981 as Statistics; and (2) the "INSLAW at private ex-

(2) enhancements undertaken by LEAA funding; and

(3) the so-called printed contract to the Bureau of Justice on May 17, 1964 created under contract to the Department of Justice on May 17,

It is apparent that both Mr. Brewer and Mr. Videmanns, in 1982, reacted very strongly to INSLAW's no-private funding

funding the implementation of the project. INSLAW's proprietary interest in the project was made to the PROMIS software. INSLAW, Mr. Stanley General, stat

ment, INSLAW could assert that it have.³⁰

A. PROJECT MANAGER BREWER: AN INTERNAL CONFLICT OF INTEREST

²⁰ Findings of Fact and Conclusions of Law, No. 168, 170, pp. 85-86, and *see* C. Mathison Brewer, September 13, 1990, p. 74.

to a Bureau of Justice Statistics contract with INSILAW.

Findings of Fact and Conclusions of Law, No. 101, 103, pp. 110-11

cient time period to find a job rather than out of the company. After the initial confusion over the FROMIS software enhancements, INSLAW formally complained to Mr. M. Brewer that the software was biased against INSLAW because he had taken a position with the company; and that it should have placed another official in the position. Mr. Brewer, who was not tainted with past negative associations with the company, believed that Mr. Brewer harbored antipathy toward INSLAW. Mr. Brewer's past working relationship with Mr. M. Brewer were apparently impervious to these criticisms. Mr. Brewer's skills and prior employment with INSLAW were not significant factors in his hiring by the Department. Mr. M. Brewer, who was the Deputy Director of the EOUSA, who was not tainted with past negative associations with INSLAW, believed that Mr. Brewer's employment with INSLAW was not tainted with past negative associations with the company.

run the implementation of a U.S. attorneys to... basically direct a case tracking system in U.S. attorneys to understand, however

I was not a computer person viewed as being liaison, the person who would, by osmosis or otherwise, happen, a coordinator. It was interviewing Mr. Bre...

Even after interviewing other Department personnel involved, investigators were unable to determine why the position was considered for the promotion. Still, there was no indication of a conflict of interest created by Mr. Hamilton and his total lack of qualifications.

Mr. Hamilton said he had been contacted by the Department contracting agent—his name was not given—and that he had prepared, much less best qualified, than anyone else who had applied. As project manager through-
out the project, Mr. Brewer was involved

As project manager, Mr. Brewer was involved in all aspects of the contract, Mr. Brewer was involved in the development of the contract, Mr. Brewer was involved in the development of the contract, Mr. Brewer was involved in the development of the contract.

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and the POWERS for completing the

cient time period to find a job rather than summarily forcing him out of the company. After the initial conflict with Mr. Brewer flared up over the PROMIS software enhancement issue in April 1982, INSLAW formally complained to Mr. Morris that Mr. Brewer was biased against INSLAW because he had been asked to resign his position with the company; and that in any event, the Department should have placed another official in charge of managing the project who was not tainted with past direct (and very possibly negative) associations with the company. Mr. Hamilton strongly believed that Mr. Brewer harbored antagonistic feelings about his past working relationship with Mr. Hamilton. Department officials were apparently impervious to these concerns and stated that Mr. Brewer's skills and prior employment with INSLAW were important factors in his hiring by the Department. Mr. McWhorter, Deputy Director of the EOUSA, who was involved in Mr. Brewer's hiring, believed that Mr. Brewer's employment by INSLAW qualified him to:

...run the implementation of a case tracking system for U.S. attorneys to...basically direct the implementation of a case tracking system in U.S. attorneys offices.³³

It is difficult to understand, however, how Mr. McWhorter could make this statement. By Mr. Brewer's own admission, he had very little, if any, experience in managing computer projects and Government ADP procurement law at the time he was hired. Perhaps even more damaging, while under oath to committee investigators, he admitted to a lack of experience or detailed understanding of computers or software:

...I was not a computer person. We talked about my role, viewed as being liaison, the person who would make things happen, a coordinator. It was not contemplated that I would, by osmosis or otherwise, learn computer science.³⁴

Even after interviewing Mr. Brewer's supervisor (Mr. Tyson) and other Department personnel involved with his hiring, committee investigators were unable to determine how Mr. Brewer came to be considered for the position. Still unexplained—given the appearance of a conflict of interest created by his past employment with Mr. Hamilton and his total lack of experience and training in ADP contracting—is why the Department would have considered him prepared, much less best qualified, for the job.

As project manager throughout the implementation of the contract, Mr. Brewer was involved in all major contract and technical decisions—including the development of the Department's position on INSLAW's claim of proprietary software enhancements made to the public domain version of PROMIS. Significantly, Mr. Brewer, also reported on the progress on the contract to the Department's PROMIS Oversight Committee, a senior level decisionmaking committee organized in 1981 as part of the Department's overall control point for the PROMIS project.³⁵

³³ Deposition of Laurence S. McWhorter, June 12, 1987, pp 11-12.

³⁴ Sworn statement of C. Madison Brewer, September 13, 1990, p. 39.

³⁵ The PROMIS Oversight Committee reviewed and approved plans developed by Mr. Brewer and the EOUSA for implementing the PROMIS software into the EOUSA district offices. The

Investigations by both the Senate and GAO into the INSLAW matter flagged serious concerns about Mr. Brewer's appointment and the possible conflict of interest his appointment represented. The Permanent Subcommittee on Investigations (PSI) drew the same conclusion as the GAO's audit manager that Mr. Brewer's appointment as project manager created an undeniable appearance of a conflict of interest that should have been avoided at all costs by the Department. The PSI report stated:

The staff finds that the Department exercised poor judgment in ignoring the potential for a conflict of interest in its hiring of the PROMIS project director (Brewer), and then, after receiving allegations of bias on his part, in failing to follow standard procedures to investigate them in a timely manner.³⁶

The potential conflict of interest was an unsatisfactory situation irrespective of his admittedly negative feelings about his forced resignation from the company. Had Mr. Brewer taken actions which could have been construed to unduly favor INSLAW throughout the life of the contract, similar questions of potential conflict could just as easily have arisen either from within the Department or from outside competitors of the company. In either situation, the Department had placed itself in an undeniable ethical situation that could have been easily avoided had it followed basic procedures to prevent any possible appearance of a conflict. On this point, Judge Jensen stated that:

I would think that the better path of wisdom is not to do that [hire an alleged fired employee to direct the contract of his former employer] if that's possible to do... I think that it's better to have these kinds of issues undertaken by people who don't have questions raised about them one way or the other whether they are biased in favor of or against the people they deal with.³⁷

While phrased in the abstract, Judge Jensen and other Department officials apparently ignored the circumstances surrounding Mr. Brewer's departure from INSLAW and did not consider the po-

ssential membership originally consisted of the Associate Attorney General (Rudolph W. Conlin), the Associate Deputy Attorney General (Stanley E. Morris), the Director of EOUSA (William P. Tyson), and Justice Management Division's (JMD) Assistant Attorney General for Administration (Kevin D. Rooney). The Associate Attorney General was the Chairman of the Committee. See memorandum from Mr. Kevin D. Rooney, Assistant Attorney General for Administration and Mr. William P. Tyson, Acting Director, EOUSA to Deputy Attorney General Edward C. Schmitt, August 13, 1981, p. 3 (hereinafter Rooney and Tyson memorandum).

It is important to note that Mr. Jensen was heavily involved in the Department's PROMIS project. Mr. Brewer has testified that Judge Jensen, who was the Assistant Attorney General for the Criminal Division between 1981 and early 1983, attended most, if not all, of the PROMIS Oversight Committee meetings as a participant and, later, as the chairman of the committee. Mr. Brewer indicated that Judge Jensen attended these meetings before he became Associate Attorney General (and Chairman of the Oversight Committee) because PROMIS implementation was a very high priority program, and representation from all departmental offices was required. During early 1983, as Associate Attorney General and later as Deputy Attorney General, Judge Jensen was ranking Chairman of that Committee and one of its most influential members throughout the life of the PROMIS contract. Sworn statement of C. Madison Brewer, September 13, 1990, pp. 114-15.

³⁶ Staff Study of Allegations Pertaining to the Department of Justice's Handling of a Contract with INSLAW, Inc., by the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, September 1989, p. VII.

³⁷ Office of Professional Responsibility Deposition of Judge Lowell Jensen, June 19, 1987, p.

tential bias or conflict of interest issues either before or after his hiring. In fact, Mr. Brewer stated that no formal inquiry into these charges was made by the Department until after the contract expired in 1985. On the issue of his departure from INSLAW, Mr. Brewer stated under oath to OPR investigators that:

At no time did he [Mr. Hamilton] ever say you are fired and at no time did he [Mr. Hamilton] ever indicate great dissatisfaction with my performance.

I don't believe anything Mr. Hamilton did regarding my employment or relationship with the Institute... was wrong. I never felt that I was discharged, let alone wrongfully discharged.

Mr. Brewer again asserted this position under oath to committee investigators:

I never thought that he asked me to leave. It has always been my understanding that I was not asked to leave... I have never viewed my departure from the Institute as either being a discharge, or forced.

However, in other parts of his testimony to OPR and the committee investigators he appears to acknowledge that Mr. Hamilton asked him to leave. For example, he stated to OPR:

...it has been my view that Mr. Hamilton obviously wanted me gone. I had been sending these signals, if not directly indicating a job dissatisfaction, since April, and it was now February, almost 1 year later and I was still extricating myself.

Mr. Brewer's statements that he was not asked to leave are also contradicted by other witnesses' statements on this point. As indicated above, according to Mr. Hamilton, Mr. Brewer was unable to perform the duties required of him and, as a result, he was asked to leave.³⁸ Mr. Hamilton's account was corroborated by Mr. John Gizzarelli, Jr., who stated under oath that Mr. Hamilton mentioned that Mr. Brewer had been asked to resign and Mr. Hamilton asked for advice on how Mr. Brewer could be removed while preserving his professional dignity and feelings.³⁹

Mr. Brewer appears to contradict his own assertions that he was never asked to leave by Mr. Hamilton. At trial, Mr. Brewer stated under oath that:

...on one occasion Mr. Hamilton came and said to me, "can you go to lunch?" I explained that I couldn't... And he said, "Well, what I have to say over lunch I can say right now. I think you ought to find [an] alternative—that you ought to leave the Institute."

The circumstances surrounding Mr. Brewer's departure from the institute appears to have had a major influence over his views about INSLAW and its president, Mr. Hamilton. Several witnesses asserted that Mr. Brewer exhibited considerable bias against INSLAW and Mr. Hamilton during critical points of the contract.

³⁸ Findings of Fact and Conclusions of Law, pp. 49-52.

³⁹ Testimony of John Gizzarelli at trial, July 22, 1987, p. 473.

He was very supportive, and I thought that he was a very dynamic and creative person, a very skilled communicator and a very talented individual, but as to some aspects of life, one who did not have a realistic viewpoint on some things... he had said some things to me on occasion that made me think that he was somewhat of a zealot about his pursuits and the things he did... Mr. Hamilton is a difficult person to deal with, or that he is not realistic... -10

I also had occasional contact with Mr. Brewer during the period of his employment with INSLAW. . . specifically, he thought that Mr. Hamilton was insane. And I think he meant that literally. He did make comments about his rationality, his sanity, thought he wasn't capable of leading an organization. The tenor of his remarks were to me very startling.

... mental observation... was used to describe a person for whom that process might be advisable, mental observation being a psychiatric evaluation to determine whether or not a person is or is not afflicted with a psychosis. And Mr. Brewer used that term to describe Mr. Hamilton. He said he was M.O., (mental observation/ which is a colloquialism—means he should be examined by a psychiatrist.

After he became the project manager... a flood of memories about his prior involvement with INSLAW and his characterization of Bill Hamilton came back, and I was afraid that his bias would be overwhelming—would overwhelm him.⁴¹

... has made no secret of his dislike of Bill Hamilton. In his present job, he is in a position to demonstrate his dislike. Bill, however, has kept his distance from the project and probably will continue to do so, until and unless there are large problems which Bill—in his role as president—must deal with personally. It is entirely possible—and I believe likely—that Brick will escalate the level of controversy until he draws Bill into the project, at which time he will be able to "lord it over him" and show who's boss.

⁴⁰ Sworn statement of C. Madison Bryant, September 13, 1990, pp. 11 and 25.
⁴¹ Goodrich sworn testimony, pp. 474-476.

...I think the most descriptive answer is to say that Mr. Brewer exhibited an animus toward INSLAW.¹²

He viewed with... skepticism and negativism and some hostility INSLAW's allegations with regard to its financial condition. And I recall specifically that I reached the conclusion at that time that, and I recall expressing it to him, that he had a problem, that he seemed to think there was something wrong with a contractor benefiting from a government contract. Let me be more specific on that point. The gist of what he seemed to be saying was that by performing this contract INSLAW and Mr. Hamilton, specifically, was making an effort to expand the company... And there seemed to be a negative inference toward INSLAW's ability to use the base created by this contract to expand. And I recall explaining to him that that was not a legitimate, and, indeed, that...

And I recall explaining to him that that was perfectly legitimate, and, indeed, that the Government often in its efforts to support congressionally the appropriations for the space program and other programs often points out that a byproduct of a space program is a better toaster oven because various alloys [are] created or what have you. It's a common phenomenon whereby the... by-product of Government work is the ability to benefit both the company the Government and the community generally in a broader way. And Mr. Brewer seemed to resent the fact that INSLAW might use the benefits of this large contract to expand its company, which at that time it was doing.⁴³

On this same issue the Bankruptcy Court concluded that:

On the basis of the... evidence taken as a whole, this court is convinced beyond any doubt that... Brewer was consumed by hatred for and an intense desire for revenge against Mr. Hamilton and INSLAW, and acted throughout this matter in a thoroughly biased and unfairly prejudicial manner toward INSLAW.

In reviewing Judge Bason's substantive findings of fact and conclusions of law, the District Court also concluded that:

The nature and circumstances of his separation from that employment are somewhat in dispute, but it is clear that Brewer was not happy in his job when he left it after being urged to do so by Hamilton.

INSLAW attributed its troubles to an acute bias on the part of Brewer, who according to it was intent on running the company out of business. INSLAW lodged many com-

⁴² Memorandum from Mr. John Gizzarelli to Mr. Dean Merrill, July 1, 1982, pp. 1-3.
⁴³ Testimony of Harvey G. Sherzer, INSLAW's attorney, June 30, 1987, pp. 63-64.

plaints of bias and made several request of DOJ to investigate these complaints and give some relief from what it perceived to be grossly unfair treatment. DOJ made no meaningful response to these complaints, and INSLAW's fortunes did not change.

INSLAW's problems began soon after the contract was awarded and immediately after its assertion of proprietary enhancements to public domain PROMIS. Mr. Brewer's animosity toward INSLAW was strongly manifested in a meeting (April 19, 1982) to discuss INSLAW's proposal to market its Enhanced PROMIS software, as noted in an INSLAW memorandum on the meeting:

Brewer... seized upon this issue and launched into a tirade which was very emotional, unorganized and quite illogical. He said that:

"1. the memo was typical of INSLAW and Bill Hamilton and that it was self-serving and unnecessary.

"2. that how did they know that we might say work was not finished under our Government contracts and the next week copyright the work and begin selling it back to the Justice Department.

"3. that the press release about the contract award was not accurate in that it described West Virginia as a successful implementation when in fact, they had spent an additional 20K on the project and Lanier was doing all the work....

"7. that the memo had caused all kinds of problems in Justice and had many people upset.

"8. that if you ask Namely, Illinois Criminal Justice Coordinating Council, Michigan Prosecuting Attorney's Association, Andy Voight and others, they would tell you that INSLAW did not do good or successful work.

"9. that Bill Hamilton started the PROMIS system as an employee of the D.C., U.S.A.O. and that all of the software was developed with Federal funds and what right did Hamilton have to try to claim ownership of the software."

All of these comments were based with an obvious dislike of Bill Hamilton and a resentment for the success of INSLAW personified in him.⁴⁴

After this meeting, INSLAW complained to Associate Deputy Attorney General Morris that Mr. Brewer was obviously biased against INSLAW because he had been asked to leave his employment at the company. On this basis, INSLAW requested that Mr. Brewer be recused from further Department consideration of the proprietary software enhancement issue. Subsequently, Mr. Morris decided to remove Mr. Brewer from face-to-face negotiations with INSLAW officials on the enhancement issue. By note dated May 27, 1982, Mr. Laurence McWhorter, Deputy Director of the Executive Office of U.S. Attorney, stated that he was directed by Mr. Morris to "take the point outside the Department" on the proprietary enhancement issue. It is clear from this action that Mr. Morris was concerned about the possibility of an appearance of a con-

⁴⁴ April 27, 1982, INSLAW Memorandum to File from J. F. Kelly and J. Derry.

flict of interest with having an ex-employee of INSLAW operating as the Department's project manager on a contract involving the same company. However, this solution was only superficial because Mr. Brewer continued to have substantive influence over the management and administration of the INSLAW contract. Mr. Brewer acknowledged under oath that he remained involved in the Department negotiations with INSLAW on all important issues including the enhancement issue throughout the life of the contract. He also stated that Mr. Hamilton had "shot himself in the foot" and created considerable "ill will" within the Department by asserting that INSLAW had proprietary interest in the PROMIS software.⁴⁵ INSLAW's expanding problems with the Department are detailed in the following sections of the report.

B. BREWER AND VIDENIEKS THREATEN INSLAW

During the contract negotiations the Department acknowledged INSLAW's cash-poor situation by inserting a contract clause that enabled INSLAW to receive payment in advance of the Department receiving and approving finished products.⁴⁶ During November 1982, the Department learned that INSLAW had assigned Government invoices to a financial institution to secure a line of credit, and Mr. Videnieks, by letter dated November 10, 1982, asserted to INSLAW that it was in default of the advance payments clause of the contract.⁴⁷

Cancellation of the advance payments would have had a devastating impact on INSLAW. Mr. Videnieks told committee investigators under oath that:

I think I was advised at the same time... that INSLAW may indeed have difficulty in meeting the December payroll, and I think in general I was advised that they were in bad financial condition.⁴⁸

INSLAW, at that point, was supporting the Department's utilization of PROMIS with its proprietary enhanced software through time-sharing on a mainframe. The Department, lacking the hardware to implement public domain PROMIS, moved to obtain a copy of INSLAW's proprietary Enhanced PROMIS software, as described in an internal memorandum dated March 7, 1983:

Of course, an INSLAW failure at any time prior to contract completion would have a detrimental effect on the implementation project. Currently, programmatic risk is very high. So long as INSLAW continues to support U.S. attorneys' offices in a timesharing mode, withholds time-sharing [the enhanced] PROMIS software, and fails to

⁴⁵ Sworn statement of C. Madison Brewer, September 13, 1990, pp. 155-156.

⁴⁶ The advance payments clause (NX1) from contract states that: "The amount of advance payments at any time outstanding hereunder shall not exceed:
\$280,000.00 during the first 12 months of contract performance;
\$380,000.00 during months 13 through 20 of contract performance;
\$280,000.00 during months 21 through 30 of contract performance; and
\$100,000.00 for the balance of the performance of the contract."

⁴⁷ Mr. Brewer stated that the reason for considering terminating INSLAW's advance payment account was that a loan INSLAW had with the Bank of Bethesda, pursuant to which a lien was placed on payments received by INSLAW from the account (not the account itself), was contrary to the contract and placed the Government in financial risk.

⁴⁸ Sworn statement of Peter Videnieks, November 5, 1990, p. 62.

complete delivery of at least one system operating on a Government furnished Prime computer and at least one system operating on a Government-furnished Lanier word processor, programmatic risk will remain high.⁴⁹

Mr. Videnieks told committee investigators under oath that:

We were afraid if they indeed were for financial reasons required to close their doors... then we would have to revert to a manual PROMIS in these U.S. attorneys offices. So the reason for requesting copies of this data and documentation were to be able to continue, if indeed INSLAW were to close its doors, automated PROMIS on Government computers.⁵⁰

An internal Department analysis notes, however, that:

Because DOJ's computers were not in place, DOJ purchased time on INSLAW's computer. INSLAW retained the software to use for time-sharing purposes in its offices and had not yet delivered it to the various U.S. attorneys' offices.⁵¹

Judge Bryant pointed out that:

On November 19, 1982, DOJ's technical representative formally requested a copy of the PROMIS software that was then in use by the U.S. attorneys' offices. According to the Justice Department the request was motivated by concern over the financial viability of INSLAW. It is without dispute that because the Government had not obtained the minicomputer hardware for each office, INSLAW arranged for the largest U.S. attorneys' offices to use PROMIS on a time-sharing basis.

Mr. Brewer stated in a December 9, 1982, memorandum that he was concerned with the possibility of INSLAW's bankruptcy, the possible need for in-house EOUSA personnel to take over the PROMIS project, and the possibility of terminating the PROMIS contract. In December 1982, Mr. Videnieks demanded that INSLAW turn over all computer programs and supporting documentation relating to the contract.⁵² INSLAW responded that it would not do this without the Department modifying the contract to acknowledge that proprietary enhancements had been inserted into the Department's public domain version of PROMIS. INSLAW required this acknowledgment because INSLAW's other timesharing customers also used this proprietary version of PROMIS.

The Department responded that the contract called for software in which the Government had unlimited rights, and asked that INSLAW identify those portions of the software that it claimed

⁴⁹ March 7, 1982, Department of Justice internal memorandum, entitled "PROMIS Implementation Contract, Programmatic Risk related to possible failure of INSLAW as a business entity."

⁵⁰ Quoted statement of Videnieks, pp. 13.

⁵¹ Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter from Mr. Robert B. Lynn, Jr., Acting Counsel, Office of Professional Responsibility, to Mr. Harold G. Christensen, Deputy Attorney General, March 31, 1989. OPR Footnote 13, pp. 24-25.

⁵² Letter from Mr. Peter Videnieks, contracting officer, to Mr. John Gutzwiller, INSLAW, Inc., November 5, 1982, p. 1.

were proprietary. INSLAW offered to provide the enhanced software if the Department agreed to INSLAW's rights and controlled its dissemination. Mr. Videnieks stated to committee investigators that the Department believed that it had unlimited rights to any versions of PROMIS, and data rights restrictions would not satisfy INSLAW's obligation under the contract.⁵³

INSLAW proposed that the Department use its enhanced software at the 94 U.S. attorneys offices at no additional cost, but that the Government not disseminate the Enhanced PROMIS beyond those offices. The Department objected to this proposal and made a counter-proposal that a contract modification be made which, in exchange for the software and documentation requested previously, the Department would agree not to disseminate Enhanced PROMIS beyond the 94 offices and the EOUSA pending resolution of the enhancement dispute.⁵⁴

Mr. Videnieks further proposed that, if INSLAW could demonstrate that the software contained enhancements to which the Department was not entitled, the Department would either direct that INSLAW remove the enhancements or negotiate with INSLAW regarding inclusion of the enhancements.⁵⁵

C. INSLAW ATTEMPTS TO DEMONSTRATE ENHANCEMENT OWNERSHIP

INSLAW and the Department ostensibly resolved their dispute by "good-faith" action on a contract modification (Mod. 12) dated April 11, 1983. As a result, DOJ agreed to continue to provide advance payments to INSLAW.⁵⁶ According to Judge Bryant, under this agreement:

The parties reaffirmed their understanding that their initial contract governs the rights to the disputed software.

By letters dated April 5, and April 12, 1983, INSLAW attempted to demonstrate that its enhancements were privately funded, but the Department did little to assist INSLAW in determining what documentation would be acceptable.⁵⁷ By letter dated April 21, 1983, Mr. Videnieks reiterated that the contract entitled the Government to a version of PROMIS with no restrictions, and demanded that INSLAW:

....provide all information necessary to demonstrate that the change was developed both at private expense and outside the scope of INSLAW's performance of any Government contract.

⁵³ Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, March 31, 1989, p. 27.

⁵⁴ March 18, 1983, letter to Harvey Sherzer, Esq., INSLAW's attorney, from Peter Videnieks, p. 2.

⁵⁵ Ibid., p. 2.

⁵⁶ Funds were placed by the Department into an account at the Bank of Bethesda. INSLAW could withdraw funds from the account (based on expenses incurred) only after a voucher was signed by Mr. Videnieks.

⁵⁷ Letters from Mr. Harvey G. Sherzer, INSLAW counsel, Pettit & Martin, to the Department, April 5, 1983 and April 12, 1983.

INSLAW sent another proposed methodology to demonstrate private funding by letter dated May 4, 1983.⁵⁸ Mr. Videnieks responded that INSLAW's methodology was unacceptable because it did not identify enhancements developed without Federal funds.⁵⁹ Mr. Videnieks never provided INSLAW with a methodology on standards by which INSLAW could demonstrate his evidence requirements.

Mr. Jack Rugh, the Department's Acting Assistant Director for Office of Management Information Systems Support (OMISS), analyzed the INSLAW submissions supporting its contentions that Enhanced PROMIS had been privately funded. Mr. Rugh stated under oath during the Bankruptcy Court hearing that it was his opinion that the methodology used by INSLAW to support its assertion was flawed and that the company's presentation "probably" [emphasis added] lacked accounting records to support its claims. Mr. Rugh further stated that he could not recall if he had informed INSLAW of his concerns regarding their lack of accounting records to substantiate their claims. Mr. Rugh said that although he could see no reason why he would withhold this information from INSLAW, he could see no reason for including it.⁶⁰ Mr. Rugh stated, however, that INSLAW had an excellent method of documenting the changed (enhanced) source code, so that those changes could be considered proprietary if they were attributed to a particular private source.⁶¹ This admission caused the bankruptcy judge to conclude:

This process of comparing the enhancements proofs with the previously-provided PROMIS software could have been performed easily by INSLAW with DOJ's assistance in the summer of 1983, when INSLAW attempted to negotiate this issue with DOJ and submitted to DOJ its memoranda proving specific enhancements. All of the documents used by INSLAW in this proceeding to identify the funding of its enhancements existed at the time the negotiations should have occurred. As Mr. Rugh conceded at trial, the proofs offered by INSLAW would have satisfied him that the enhancements were indeed privately funded. (Rugh, T. 1517-1520). DOJ was required to negotiate then, in 1983, as Videnieks specifically had proposed under Modification 12, (see PPF 228-236) but instead it wrongfully and cynically failed either to negotiate in good faith or even to reveal to INSLAW any purported concerns of Messrs. Rugh and Videnieks at that time with INSLAW's proposed method of proof (see PPF 246-250).⁶²

Mr. Videnieks never accepted any INSLAW attempts at defining proprietary enhancements, and Department officials concluded that the Department had the same unlimited rights to Enhanced PROMIS as it had with public domain PROMIS. This posture was

⁵⁸ Letter from Mr. Harvey G. Shertzer, INSLAW counsel, Pettit & Martin, to Mr. Peter Videnieks, contracting officer, May 4, 1983.

⁵⁹ Letter from Mr. Peter Videnieks, contracting officer, to Mr. Harvey G. Shertzer, Esq. Pettit & Martin, June 10, 1983, p. 2.

⁶⁰ Testimony given during INSLAW, Inc. v. United States, by Mr. Jack Stanley Rugh, July 28, 1987, p. 1512.

⁶¹ *Id.*, pp. 1517-1518.

⁶² INSLAW, Inc. v. United States, 81 F.R. 88 (Bkcy. D. Dist. Col. 1986) at 107 (Finding 83). Also see (PFSA) for Terms of Modification 12.

made clear from a variety of sources, including Messrs. Brewer and Videnieks. In a sworn statement before this committee, Mr. Brewer responded to the following questions:

Question: At this April 19th meeting, do you recall making the statement that the Department had unlimited rights to the software?

Mr. Brewer: That was our position throughout this whole thing, yes.

Question: What is your view today on that?

Mr. Brewer: I maintain that we negotiated for and received unlimited rights and data.

Mr. Videnieks also believed that the Department had title to Enhanced PROMIS, which he characterized while discussing his position regarding Modification 12 in a sworn deposition before this committee:

Initially, I'm the one who wanted no modification. I wanted only a letter saying, "Give us the data," because if we—we don't need any signatures, if we can get the goods. My words. The goods were ours under the contract. All we would have to pay for to effect delivery of those goods were reproduction costs.

Brewer, I believe, wanted a supplemental agreement but not a modification. I didn't want any of them. But the legal advice was that Bill Snider [the Department's legal counsel] felt strongly that there should be a Modification 12, but my opinion was supported by Patricia Rudd, who was the Chief Procurement Officer at that time.

So we in Procurement, the hands-on people, thought that the contract as it stands had the mechanism in there for satisfying the Program Officer's needs. But the lawyers on all sides felt that we needed to write escrow agreements and make the thing look pretty, I guess.⁶³

Mr. Videnieks, by letter dated July 21, 1983, told INSLAW that:

We agree with you that Modification No. P0012 to the Contract continues to limit dissemination of that version of the PROMIS computer software specified in the modification. Modification No. P0012 will continue to apply in the event that the Government invokes the provisions of Clause 22, "Disputes," in that the Government will limit dissemination pending a Contracting Officer's Final Decision in the matter.⁶⁴

On December 29, 1983, in spite of a report that there was progress with INSLAW counsel on resolution of the contract problems, Judge Jensen and other members of the PROMIS Oversight Committee approved the termination of the word processing portion of the contract for default based on their view that INSLAW had failed to perform this portion of the contract.⁶⁵ However, in

⁶³ Sworn statement of Mr. Peter Videnieks, November 5, 1990, p. 94.

⁶⁴ Letter to Mr. H. G. Shertzer, INSLAW's Attorney, from Mr. Peter Videnieks, contracting officer, July 21, 1983.

⁶⁵ Findings of Fact and Conclusions of Law, No. 316 and 317, p. 144.

February 1984, Department procurement counsel William Snider issued a written legal opinion showing that the Department lacked sufficient legal justification for a default termination. Instead, the PROMIS Oversight Committee approved the termination of the word processing portion of the contract for convenience. Shortly thereafter, Mr. Brewer notified Mr. Hamilton by telephone that Judge Jensen had decided to only terminate the word processing portion of the INSLAW contract at the 74 smaller U.S. attorneys offices for convenience of the Government.⁶⁵

D. THE DEPARTMENT MISAPPROPRIATED INSLAW'S SOFTWARE

The Department's position that it owned Enhanced PROMIS was founded on amendments to the RFP⁶⁷ that (1) made available to all offerors copies of the pilot project software and (2) stated that the RFP does not anticipate redevelopment of the public domain PROMIS software used in the pilot offices. The RFP also stated that:

All systems enhancements... performed pursuant to this contract shall be incorporated within the systems which have already been installed in the U.S. attorneys' offices, including systems installed pursuant to other contracts....

According to Department officials, this language was included to ensure that offices already using PROMIS would benefit from the enhancements and modifications to the Government-furnished software during performance of the new contract. Unfortunately, this language may also have blinded Department management to the idea that INSLAW had made privately funded enhancements that were its property, notwithstanding the Department's claims to the contrary.

INSLAW attempted to convince Department officials that it held proprietary rights to Enhanced PROMIS over a period of several years, but to no avail. The Department steadfastly ignored INSLAW's requests, and even fought two judgments that it believed were in error based on technical, legal issues rather than on the merits of the case. Department officials have continued to maintain that they enjoy total control of Enhanced PROMIS since they obtained it from INSLAW in 1983.

After Modification 12 was signed and the Department obtained Enhanced PROMIS and terminated the installation of PROMIS at the 74 smaller U.S. attorneys offices, INSLAW again attempted to define its enhancements to the Department while the Department continued to use INSLAW's software and services. Each attempt was rebuffed by Mr. Videnieks. He issued a series of determinations in response to INSLAW's claims between November 1984 and September 1986. Finally, almost 3 years after signing Modification 12, Mr. Videnieks declared, on February 21, 1986, that INSLAW had no enhancements that were proprietary to it, and denied INSLAW's claim of \$2.9 million for licensing fees.

⁶⁵ *Ibid.*, p. 144.

⁶⁷ RFP amendments 1 and 2, November 9, 1981, and November 16, 1981, respectively.

The Bankruptcy Court took the position that the Department obtained INSLAW's Enhanced PROMIS through "fraud, trickery, and deceit." As stated by Judge Bason:

Under Modification 12, it is undisputed that INSLAW delivered Enhanced PROMIS to DOJ on the basis of an explicit commitment by DOJ which had three components: first, to bargain in good faith to identify the proprietary enhancements; second, to decide within a reasonable time which enhancements it wanted to use, and third, to bargain in good faith with INSLAW as to the price to be paid for such enhancements. On the basis of the foregoing and all of the evidence taken as a whole, this court finds and concludes that the Department never intended to meet its commitment and that once the Department had received Enhanced PROMIS pursuant to Modification 12, the Department thereafter refused to bargain in good faith with INSLAW and instead engaged in an outrageous, deceitful, fraudulent game of "cat and mouse," demonstrating contempt for both the law and any principle of fair dealing.⁶⁸

The Department's unilateral claim of ownership rights to Enhanced PROMIS, coupled with Mr. Videnieks' denial of INSLAW's claims to proprietary enhancements, demonstrates at the very least, a mechanistic approach to procurement policy that always favors the Department, which just happens to be in a most favored negotiating position at every turn. At worst, it reflects a biased view that denied due process and full and fair consideration, for whatever reason. Most disturbing, Mr. Brewer and Mr. Videnieks, the persons in charge of the PROMIS project, refused to consider the software ownership concepts involved in INSLAW's assertions. The judge, in the Bankruptcy Court's findings of fact and conclusions of law, stated:

Brewer was not given and had not considered INSLAW's January 13, 1982 letter, or any of the pre-contract correspondence between INSLAW and Videnieks; therefore, Brewer's subsequent positions regarding INSLAW's proprietary rights were taken without consideration of this letter.⁶⁹

This position which seemed to be predicated more in the fear of giving up an advantageous position, than reaching a determination on the merits, is corroborated in an August 15, 1984, memorandum, in which Mr. Brewer stated that:

...the proposal would substantially alter our rights in data (e.g., we would become a licensee—and thus give up the unlimited rights we currently enjoy). [Emphasis added.]⁷⁰

⁶⁸ *INSLAW, Inc. v. United States*, 80 B.R. 89 (Bkcy D. Dist. Col. 1988) at 138 (Finding 266).

⁶⁹ *Ibid.*, at 118 (Finding 141).

⁷⁰ Memorandum from Mr. C. Madison Brewer, Director, OMISS, EOUSA, to Mr. Kamal J. Rahal, Director, Procurement and Contracts Staff, Justice Management Division, August 15, 1984.

This belief was shared by other officials at the Department. In its analysis of an INSLAW proposal, dated April 30, 1985, an EOUSA analysis stated:

...it appears [to the Department] that there are no proprietary enhancements.

All...proposals received from INSLAW...attempt to force the Department into acknowledging INSLAW's proprietary interest in the U.S. attorneys' version of PROMIS by offering a license agreement for software maintenance. To accept INSLAW's proposal would, in effect, ratify INSLAW's claim that the software is proprietary; not only the micro-computer version which INSLAW proposes to develop, but also the Prime mini-computer version currently operational in 20 districts.⁷¹

Also, in a November 15, 1985, counter proposal to an INSLAW settlement offer, Justice Management Division's General Counsel hewed to the inflexible position that:

1. The United States will not pay INSLAW any additional money for software obtained pursuant to this contract.

2. INSLAW will recognize that the United States has the right to unrestricted use of the software obtained or delivered under this contract for any Federal project, including projects that may be financed or conducted by instrumentalities or agents of the Federal Government such as its independent contractors.

3. The Department of Justice will agree not to make or permit any disclosure or distribution of the software other than as described above [in 2. above] or as required by Federal law.⁷²

Between August 29, 1983, and February 18, 1985, INSLAW implemented Enhanced PROMIS in 20 U.S. attorneys offices.

Yet, even as negotiations were underway, the Department, between June 24, 1985, and September 2, 1987, installed Enhanced PROMIS software at 25 additional sites.⁷³ According to INSLAW's counsel, Elliot Richardson, Enhanced PROMIS was illegally copied to support an additional two sites and subsequently 31 additional sites were brought "on line" via telecommunications. This action was considered an explicit breach of the bankruptcy rules governing the respective actions of creditors and debtors in a reorganization situation. As stated in the findings of facts, the automatic stay provisions of the Bankruptcy Code prohibit "any act to obtain possession of property of the estate or of property from the estate or

⁷¹ Analysis of INSLAW's Unsettled Proposal of April 19, 1985, an analysis by the Executive Office for U.S. Attorneys, dated April 30, 1985, p. 5. This analysis was transmitted to Mr. Jay Bybee, the Deputy Assistant Attorney General, by Mr. William F. Tyson, the EOUSA Director, on May 1, 1985.

⁷² Letter from Mr. Justice A. Spaulding, General Counsel, JMD, Department of Justice, to Mr. Harvey Sherman, Esq., INSLAW counsel, November 15, 1985.

⁷³ Report of the Investigation by the Office of Professional Responsibility in the INSLAW Matter, from Mr. Robert B. Lynn, Jr., Acting Counsel, Office of Professional Responsibility, to Mr. Harold G. Christensen, Deputy Attorney General, March 31, 1988, pp. 36. The report refers to 23 additional sites and this did not include the two PROMIS pilot sites which also installed INSLAW's enhanced software.

to exercise control over property of the estate."⁷⁴ The Department violated the provisions of the stay by installing Enhanced PROMIS at the additional sites, and also accomplished this deed over the known protests of INSLAW. On September 9, 1985, Mr. Hamilton told the Department that:

I am extremely disturbed and disappointed to learn that the Executive Office for U.S. Attorneys has begun to manufacture copies of the PROMIS software for customization and installation in additional U.S. attorneys offices, specifically those in St. Louis, Missouri, and Sacramento, California. This action occurs at the very time that the Department of Justice and INSLAW are attempting to resolve, by negotiation, INSLAW's claim that the U.S. attorneys version of PROMIS contains millions of dollars of privately-financed enhancements that are proprietary products of INSLAW and for which INSLAW has, to date, received no compensation.⁷⁵

Not only did the Department proceed with the national installation of Enhanced PROMIS, but it also may have used its "unlimited rights" posture as a pretextual basis for its national and international distribution of Enhanced PROMIS outside of the Department. Details of this distribution are discussed in section IV of this report.

According to Judge Bryant:

Although INSLAW and the Justice Department negotiated over the enhancements that INSLAW indicated that it had included in the proprietary version of PROMIS, the parties could not agree that the enhancements had been paid for with non-government funds. While INSLAW made several efforts to demonstrate the private financing of the enhancements, the Government did not accept its methodology for allocating funding. When asked to provide an alternative methodology that would be acceptable, the Government declined.⁷⁶

The Department proceeded in its unilateral actions despite internal advice that INSLAW's claims were not frivolous and in fact, likely to be sustained in a court challenge. Pursuant to a letter dated July 9, 1986, from Senator Mathias, Mr. Arnold Burns, the Deputy Attorney General, conducted an inquiry into the status of the INSLAW litigation and was told that INSLAW wanted the Department to pay royalties. As a result of this briefing, Mr. Burns suggested that the issue should be turned around and that a claim against INSLAW should be made for INSLAW to pay royalties to the Government since he believed that PROMIS was the Department's property. Department research provided a shocking result to Mr. Burns:

⁷⁴ Findings of Fact and Conclusions of Law, p. 190. Although this finding was upheld by the District Court, the Circuit Court of Appeals found on May 17, 1991, that the automatic stay was not violated.

⁷⁵ Letter from Mr. William A. Hamilton, INSLAW president, to the Honorable H. Lawrence Wallace, Assistant Attorney General for Administration, Department of Justice, September 9, 1985, p. 1.

⁷⁶ INSLAW, Inc., v. United States, opinion of U.S. District Court Judge William Bryant, at p. 25a.

...the answer that I got, which I wasn't terribly happy with but which I accepted, was that there had been a series of old correspondence and back and forth [sic] and stuff, that in all of that, our lawyers were satisfied that INSLAW could sustain the claim in court, that we had waived those rights, not that I was wrong that we didn't have them but that somebody in the Department of Justice, in a letter or letters, as I say in this back and forth [sic], had, in effect, waived those rights.⁷⁷ [Emphasis added.]

Considering that the Deputy Attorney General was aware of INSLAW's proprietary rights, the Department's pursuit of litigation can only be understood as a war of attrition between the Department's massive, tax-supported resources and INSLAW's desperate financial condition, with shrinking (courtesy of the Department) income. In light of Mr. Burns' revelation, it is important to note that committee investigators found no surviving documentation (from that time frame) which reveal the Department's awareness of the relative legal positions of the Department and INSLAW, on INSLAW's claims to proprietary enhancements referred to by Mr. Burns.

E. INSLAW DECLARES BANKRUPTCY AND PURSUES LITIGATION

By February 1985, at least \$1.6 million in contract payments had been withheld by the Department and INSLAW was forced to file for chapter 11 reorganization in the Bankruptcy Court for the District of Columbia.⁷⁸ On June 9, 1986, INSLAW filed a Complaint for Declaratory Judgment, and for an order Enforcing Automatic Stay⁷⁹ and Damages for Willful Violation of Automatic Stay in the Bankruptcy Court.⁸⁰ In its pleadings, INSLAW asserted that Mr. C. Madison Brewer, who was responsible for implementing PROMIS throughout the Department, was instrumental in propelling INSLAW into bankruptcy, and that he thereafter hindered INSLAW in its development of a reorganization plan.⁸¹ INSLAW also alleged that the Department had improperly converted and exercised control over INSLAW's proprietary Enhanced PROMIS and that its concerns were made known to the highest levels of Department management, without any departmental response.⁸²

On July 20, 1987, the court began a trial that lasted 2½ weeks and involved sworn statements from over 40 witnesses and thousands of pages of documentary evidence.⁸³ On September 28, 1987, Bankruptcy Court Judge Bason issued an oral ruling on liability.

⁷⁷ Sworn statement of Arnold I. Burns, by OPR, March 30, 1988, pp. 7-12. It is presumed that Mr. Burns is discussing a period of time around his confirmation date in July 1986.

⁷⁸ Memorandum from Elliot Richardson, Esq. to Special Counsel Judge Nicholas J. Bua, January 14, 1992, p. 8.

⁷⁹ The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It stops all collection efforts, all harassment, and all foreclosure actions, giving the debtor temporary relief from creditors. The automatic stay allows the Bankruptcy Court to centralize all disputes concerning property of the debtor's estate in that reorganization can proceed orderly and efficiently, unimpeded by uncoordinated proceedings in other arenas.

⁸⁰ Staff Study Of Allegations Pertaining To The Department of Justice's Handling Of A Contract With INSLAW, Inc., by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, September 1989, p. 5.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*, p. 9.

concluding that a key Department official was biased against INSLAW and that the Department "took, converted, and stole" INSLAW's Enhanced PROMIS by "trickery, fraud, and deceit."⁸⁴ On January 25, 1988, the bankruptcy judge issued his written order on liability, which documented his September 1987 oral ruling. On February 2, 1988, the court issued an order awarding INSLAW \$6.8 million in damages and \$1.2 million in attorneys' fees.

Department violated the Bankruptcy Court's automatic stay: During INSLAW's period of chapter 11 bankruptcy, the Department proceeded to copy and use INSLAW's Enhanced PROMIS, and even spread its use—in violation of the automatic stay. By letter dated March 14, 1986, shortly after INSLAW declared bankruptcy, INSLAW's counsel notified the Department's contracting officer that:

...any continued use by the Department of the [Enhanced] PROMIS software without the consent of INSLAW and the use of the software without any agreement as to the payment of license fees contravene INSLAW's property rights, its rights as a debtor in possession under the Bankruptcy Code and is a wrongful exercise of control over property of the debtor's estate in violation of the automatic stay now in effect. Furthermore, the Department's disclosure and dissemination of the PROMIS software to third parties will substantially dissipate, if not completely waste, the commercial value of this major INSLAW asset. We will hold the Department of Justice liable for any such loss of the value of INSLAW's property rights and if necessary will take such actions as are required to prevent such a loss.... If the Department of Justice causes a loss in the commercial value of INSLAW's principal asset, PROMIS, it may be responsible for destroying the company.⁸⁵

The Bankruptcy Court found that the Department had violated the automatic stay by not negotiating a license fee for Enhanced PROMIS after INSLAW declared bankruptcy:

...INSLAW is entitled to automatic stay protection for its enhancements under the bankruptcy laws, and appropriate relief for violations of the automatic stay by DOJ.

* * * * *

Under 11 U.S.C. 362(h), [a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages.

⁸⁴ *Ibid.*

⁸⁵ Letter from Mr. Leigh S. Ratiner, INSLAW counsel, to Mr. Peter Videniuk, contracting officer, March 14, 1986, pp. 1-2.

A "willful" violation does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

* * * * *

The judge concluded that the Department was liable for actual damages, including costs and attorneys' fees, and that INSLAW could recover punitive damages.

F. DISTRICT COURT JUDGE WILLIAM BRYANT'S DECISION ON APPEAL OF THE BANKRUPTCY COURT'S RULING

The Department appealed the Bankruptcy Court rulings in the U.S. District Court for the District of Columbia. On November 22, 1989, the District Court upheld the Bankruptcy Court's orders regarding liability and damages against the Department. District Court Judge William Bryant in his ruling stated:

The government accuses the bankruptcy court of looking beyond the bankruptcy proceedings to find culpability by the government. What is strikingly apparent from the testimony and depositions of key witnesses and many documents is that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work.⁸⁷

In its decision upholding the ruling of the Bankruptcy Court, the District Court:

Emphasized that the Department knew Enhanced PROMIS represented INSLAW's central asset and that ownership of the software was critical to the company's reorganization.

Held that the Department's unilateral claim of ownership and its installation of Enhanced PROMIS in offices around the United States violated the automatic stay.

Concurred with the bankruptcy court's conclusion that the Department never had any rights to Enhanced PROMIS.

The District Court also agreed with Bankruptcy Judge Bason's finding that:

...the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract. ...

and found

⁸⁷ INSLAW, Inc. v. United States, opinion of U.S. District Judge William Bryant, at pp. 48a-50a.

...convincing, perhaps compelling support for the findings set forth by the bankruptcy court.... The cold record supports his [Bason's] findings under any standard of review.⁸⁷

The District Court also found that the Department unlawfully violated the automatic stay provision of the Bankruptcy Code and agreed that the Department attempted to convert INSLAW's bankruptcy standing from a chapter 11 reorganization to a chapter 7 liquidation. The court also upheld the Bankruptcy Court's order regarding assessed damages as a result of the Department's order refully exercising control over and proliferating INSLAW's unlawful PROMIS and upheld the award of attorneys' fees, but reduced compensatory damages by \$655,200.⁸⁸

DEPARTMENT'S POSITION AGAINST JUDGE'S DECISION IS REBUTTED ON APPEAL

The Department's legal defense was found to be deficient on appeal by District Court Judge Bryant.⁸⁹ The Department contended that the Bankruptcy Court lacked jurisdiction over INSLAW's claim because the Department had not waived its immunity from monetary judgments against the United States. Judge Bryant ruled against the Department's position stating that the Department's actions throughout the litigation suggested a calculated decision to assert a claim against INSLAW until it appeared that the Department had more to lose than gain.

The Department also argued that the Bankruptcy Court should have referred the case to the Department of Transportation Board of Contract Appeals (DOTBCA) for judgment because INSLAW's claims were based on contract law. However, Judge Bryant found that the INSLAW case did not involve a contract claim but was grounded in bankruptcy law, whereby INSLAW sought relief for violations of the automatic stay provisions of bankruptcy laws. Judge Bryant also found that Bankruptcy Judge Bason used his discretion to decide the legal ownership of Enhanced PROMIS that was necessary for determining whether there had been a violation of the automatic stay.

The Department also argued that INSLAW did not prove that the automatic stay had been violated. However, Judge Bryant concluded that the facts established in the Bankruptcy Court support the multiple violations of the automatic stay that the Bankruptcy Court found. Judge Bryant stated that the Department knew that PROMIS represented INSLAW's principal asset and that, without ownership of the software, the company's economic viability was threatened. Judge Bryant found that the Department acted willfully and fraudulently to obtain property that it was not entitled to under the contract and that, once the software was in the possession of the Department, there was no evidence that it ever negotiated in good faith over the proprietary enhancements claimed by INSLAW. Judge Bryant noted that, instead of following the proce-

⁸⁷ INSLAW, Inc. v. United States, opinion of U.S. District Court Judge William Bryant, at 50a.

⁸⁸ INSLAW, Inc. v. United States, opinion of U.S. District Judge William Bryant at pp. 56a-56b.

⁸⁹ INSLAW, Inc. v. United States, opinion of U.S. District Judge William Bryant at pp. 31a-36a.

ture established by the Bankruptcy Code for resolving the ownership dispute and seeking relief from the automatic stay, the Department had pursued a course of self-help by claiming Enhanced PROMIS to be its property and installing it throughout the United States.

The Department also charged that Judge Bason exhibited the appearance of bias and should have recused himself, and requested a new trial based on this assertion. The Department also accused Judge Bason of using the bankruptcy proceeding to find culpability by the Government. Judge Bryant responded that the Department had previously been denied its reversal request by the District Court and, considering the earlier denial, no new trial would be granted. Judge Bryant further stated that, while the bankruptcy review must focus on Department actions taken after INSLAW filed for bankruptcy, the Department's actions cannot be understood without understanding the events leading up to the bankruptcy. He added that what was strikingly apparent from the evidence was that INSLAW performed its contract in a hostile environment from the higher echelons of the Justice Department to the officials who had responsibility for supervising its work. Judge Bryant also noted that Judge Bason's attention to detail, in both his oral and written rulings, demonstrated a mastery of the evidence and provided compelling support for his findings. Judge Bryant concluded that the record adequately supported the bankruptcy judge's findings under any standard of review.

The Department also stated that the award of damages by the Bankruptcy Court exceeded its authority and urged that no attorney fees be awarded. However, Judge Bryant determined that the Bankruptcy Court discharged its responsibility to assess damages based on the evidence provided at trial, and its decision was supportable.

G. APPEALS COURT REVERSES INSLAW'S VICTORY ON PRIMARILY JURISDICTIONAL GROUNDS

On October 12, 1990, the Department appealed the District Court decision to the U.S. Court of Appeals for the District of Columbia. The Department raised some of the same issues previously raised in its appeal to the District Court and requested a reversal on the basis of the facts found in the Bankruptcy Court. In its brief for the appellants, the Department stated that:

In the district court, the Government set out the clear errors underlying these findings of facts at great length and with great specificity. The district court's decision is deficient in not discussing any of these specific contentions. Of necessity, our factual contentions on appeal are more limited.⁹⁰

The following issues were raised by the Department on appeal to the Court of Appeals: (1) that the Department's use of computer software in its possession did not violate the automatic stay and was more properly the subject of a contract dispute under the Contract Disputes Act, which should be heard in DOTBCA; (2) that

since there was no motion to convert INSLAW from a chapter 11 to a chapter 7, there was no violation of the automatic stay; (3) that the Department did not file a claim and therefore, did not waive its sovereign immunity; and (4) that damage awards for violations of the automatic stay can only be paid to individuals not corporations.⁹¹

On May 7, 1991, a panel of the U.S. Court of Appeals for the District of Columbia reversed both the Bankruptcy Court's and District Court's judgments on primarily jurisdictional grounds the Circuit Court found that the Bankruptcy Court was an inappropriate forum to litigate the issues it decided and furthermore that the Department had not violated the automatic stay and dismissed INSLAW's complaint against the Department. The Court of Appeals noted that both courts found that the Department had "fraudulently obtained and then converted Enhanced PROMIS to its own use." The court further noted that: "Such conduct, if it occurred, is inexcusable."⁹²

On October 9, 1991, INSLAW filed an appeal for a writ of certiorari to the Supreme Court of the United States. On January 13, 1992, the Supreme Court denied the writ.

H. DEPARTMENT ASSERTS ERRONEOUS POSITION BEFORE DOTBCA

In addition to initiating proceedings in the Bankruptcy Court, INSLAW pursued remedies under the Contract Disputes Act. INSLAW filed notices of appeals with the Department of Transportation Board of Contract Appeals (DOTBCA) in February 1985, and in May and November 1986. On June 23, 1986, the first complaint was filed before DOTBCA. Additional claims were filed on September 19, 1986, and August 24, 1987.

INSLAW's claims before DOTBCA fell into six categories: (1) computer time-sharing charges associated with the computer center operated by INSLAW and used by several U.S. attorneys' offices; (2) contract target fees and voucher payments withheld by the Department and additional fees due INSLAW as a consequence of changes in the scope of work ordered by the Department; (3) indirect costs, including overhead; (4) direct costs; (5) costs, including legal fees, allegedly incurred by INSLAW because of the termination for convenience by the Department of the word processing portion of the contract; and (6) costs incurred because the Department withheld payments.

These claims were held in abeyance pending the outcome in the bankruptcy adversary proceeding. INSLAW's claims against the Department totaled \$1,589,562 and the Department's claims against INSLAW totaled \$1,216,752. On November 13, 1991, DOTBCA established October 13, 1992, as the trial date to hear INSLAW's case.⁹³

Unfortunately, the Department took the spurious position that it has successfully defended itself against assertions of illegality, as

⁹⁰ *Ibid.*, pp. 16, 24, 28, 30, 45.

⁹¹ *INSLAW, Inc. v. United States, et al.*, case No. 90-5053 and *United States of America v. INSLAW, Inc., et al.*, case No. 90-05052, U.S. Court of Appeals decision on the appeal, May 7, 1991, p. 15.

⁹² Proceedings of a hearing before the DOTBCA in the matter of *INSLAW, Inc. v. Department of Justice, et al.*, case No. 1009, November 13, 1991, p. 49.

defined in two courts and based on some of its own internal analysis, by having convinced the Appeals Court to vacate the earlier courts' decisions based on jurisdictional grounds—a ruling that had absolutely no bearing on the truth of the matter adjudicated on the basis of the substantial evidence presented. The Department is operating under the belief that it has been exonerated of any misconduct. In a November 13, 1991, hearing before DOTBCA, Department counsel stated that:

I think those trials speak for themselves, and every order has been vacated. . . .⁹⁴

However, the DOTBCA judge responded:

There is one problem. The fact that a judge or a court doesn't have jurisdiction doesn't mean that the court is completely ignorant. True, Mr. Bason [the bankruptcy court judge] and Mr. Bryant [the judge that heard the initial appeal] did not have jurisdiction, but they did make some very serious findings on the basis of sworn testimony. They had been truly vacated, and it may be that all the statutes to run have run and they can't go anywhere. Those cases may be dead forever. But it has left a cloud over the respondent [the Department]. [Emphasis added.]⁹⁵

Thus, still another adjudicating judge found that the rulings of the two courts that reviewed the INSLAW litigation ran counter to the Department's intransigent approach to recognizing formerly what its own internal analysis had suggested in confidence. When asked for his reaction to the finding of the District Court, Attorney General Meese responded that the ruling:

... seems totally at odds with everything I have learned and been told while I was in the Department of Justice... that there was any wrongdoing on the part of Justice people.⁹⁶

Department counsel at the DOTBCA hearings responded to the judge by stating that:

Your Honor, with all due respect, those orders were vacated. And the effect of the vacating is to make them void. They have no force in effect whatsoever. They are as if they never happened. They—it would be improper for a court or a board or any other judicial tribunal to rely, in any way, shape or form, on those decisions. [Emphasis added.]⁹⁷

Certainly, the Department may be correct in asserting that there is presently no legal force to the courts' rulings on terms of enforceability. But that result is because of the jurisdictional defects, and not the merits of the case, which had been adjudicated in two separate forums. However, it is not correct for the Department to conclude that the INSLAW matter has been resolved or that it should

⁹⁴ *Id.*, p. 17.
⁹⁵ Proceedings of a hearing before the DOTBCA in the matter of INSLAW, Inc. v. Department of Justice, et al., case No. 1990, November 13, 1991, p. 27.
⁹⁶ *Id.*, case No. 1990, November 13, 1991, p. 27.
⁹⁷ Proceedings of a hearing before the DOTBCA in the matter of INSLAW, Inc. v. Department of Justice, et al., case No. 1990, November 13, 1991, p. 27.

be considered as if it "never happened." The Department has not yet compensated INSLAW for its illegal and improper use of software that was found to be proprietary to INSLAW by two courts. Furthermore, Justice officials cannot escape accountability merely because the Appeals Court has reversed the lower court's rulings based on a procedural ruling.

As the DOTBCA judge concluded, there definitely remains a cloud over the Department's handling of INSLAW's proprietary countability through a technicality or a jurisdiction ruling by the Appeals Court and INSLAW deserves to receive equitable consideration of its claims.

An impartial inquiry needs to be undertaken to assess the facts and potential culpability of the actions involved. Strategic gamesmanship has no place when the full weight and resources of the enforcement arm of the Government is pitted against a private interest, whose financial ability to litigate may have been compromised by the very departmental actions in dispute. In addition, should the Department not resolve this matter fairly and expeditiously, the dispute should be referred through a bill to the Chief Judge of the Claims Court whereby the statute of limitations can be suspended. To recover in such a case a claimant must show that (1) the Government committed a negligent or wrongful act, and (2) this act caused damage to the claimant.⁹⁸

The litigation of a congressional reference case is fully adversarial once the pleading is complete. It proceeds like any other court case through discovery, pretrial, trial, the submission of requested findings and briefs, and decision. After the case is heard, a hearing officer's report is submitted to the Congress, together with the findings of facts. The hearing officer must provide sufficient conclusions to inform Congress:

... whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitable due from the United States to the claimant.⁹⁹

There is a distinct possibility that the extent of damages to INSLAW (particularly the Department's distribution of INSLAW's proprietary PROMIS) will never be fully known. Department documents provide evidence of distribution of PROMIS to at least one foreign government. There are also numerous allegations of widespread distribution to other foreign governments.

I. DEPARTMENT ENCOURAGES CONTRACT MEDIATION WHILE IT HINDERS SETTLEMENT

It is important to document that another equivocal effort to mediate the INSLAW dispute was initiated on June 28, 1990, when the Department requested the Appellate Court to consider INSLAW for the Appellate Mediation Program.¹⁰⁰ This action on

⁹⁸ See Shane, *supra* at 304.
⁹⁹ 28 U.S.C. § 2509(c).

¹⁰⁰ The Appellate Mediation Program operates under a court order issued on November 28, 1988, and amended on April 19, 1989. The program is intended to benefit the parties by providing a forum which encourages the settlement of cases, or at least the resolution or simplification

Continued

the Department's part appeared significant because it was its first mediation request out of the 13 appeals submitted since January 1989. However, the success of this program requires that confidentiality be ensured throughout the mediation process. Information concerning cases screened by the Chief Staff Counsel's Office is not to be shared with judges or with anyone outside the court. The judges do not know which cases are selected for mediation.¹⁰¹

However, for some unexplained reason, the Department failed to comply with this most basic requirement. On October 3, 1990, Ms. Linda Finklestein, Circuit Executive of the District of Columbia Circuit Court, contacted INSLAW's counsel and referred to an October 1, 1990, Washington Post article, which revealed that mediation had been requested by one of the parties. The article, cited to a departmental spokesman stated:

that the department has requested that the matter [INSLAW] be considered for mediation by the appeals court, in an attempt to settle the long-running dispute.¹⁰²

This disclosure was completely contrary to the standards of the Appellate Program pursuant to the order of the court. The effect was to force INSLAW to withdraw from the program after only 3 months. It is difficult to understand the Department's strategy by this action. It may be that the Department wanted to maintain the facade of working diligently to settle a sticky contract dispute while working behind the scenes to sabotage it and keep pressure on INSLAW by forcing it to expend additional resources on legal support during the mediation process. If this is the case, the Department was successful. But the Department also succeeded in maintaining a near-flawless record of seeking delay over resolution and raising the level of suspicion about its motives to a point where the public trust in the untarnished pursuit of justice is subject to grave doubts.

IV. SIGNIFICANT QUESTIONS REMAIN UNANSWERED ABOUT POSSIBLE HIGH LEVEL CRIMINAL CONSPIRACY

A. ALLEGATIONS OF CONSPIRACY AND INTRIGUE CONTINUE TO SURROUND THE INSLAW CONTROVERSY

The Hamiltons have alleged that high level Department officials conspired to steal the PROMIS software system. According to their allegations, the theft involved a number of stages which included: (1) the failure of the Department to comply with the terms and conditions of the contract with INSLAW; (2) attempts to force into bankruptcy and force the sale of PROMIS through liquidation of the company; (3) the attempted hostile buyout of INSLAW by a computer company owned by Dr. Earl Brian, a friend and former associate of Attorney General Meese; (4) the providing of the Enhanced PROMIS system to Dr. Brian by high level Department officials; (5) the modification of the PROMIS system by individuals as-

¹⁰¹ of some of the issues, through an independent and neutral mediator. Source: *Times* article, by the court entitled, "Appellate Mediation Program."

¹⁰² Ibid.
¹⁰³ October 1, 1990, Washington Post article, entitled "Obscured by a Theory of Conspiracy," p. 24.

sociated with the world of covert intelligence operations so that Enhanced PROMIS could be distributed worldwide to intelligence and law enforcement organizations; and finally, (6) the actual distribution of the Enhanced PROMIS software system domestically and internationally with the knowledge and support of the CIA and Justice Department.

The Hamiltons have asserted that the first step in the conspiracy to steal the PROMIS system occurred when the Department intentionally failed to comply with the terms and conditions of the contract that it had entered into with INSLAW. The Hamiltons believe that INSLAW's contract with Justice did not include the enhanced version of the PROMIS software. In November 1982, the Department demanded that INSLAW turn over the enhanced version of PROMIS stating that INSLAW had no title to it. Further, the Hamiltons have asserted the Department's project manager, C. Madison Brewer, and the contracting officer, Peter Videnieks, directed by Deputy Attorney General D. Lowell Jensen, Attorney General Edwin Meese and other high level officials, resisted any type of negotiated arrangement with INSLAW in order to put the company out of business. The Hamiltons claim that by withholding \$2 million in contract payments to INSLAW during this dispute, the Department intentionally forced INSLAW into bankruptcy. The Hamiltons have asserted that the Department then attempted to convert INSLAW from chapter 11 to chapter 7 bankruptcy, so that it could force the sale of INSLAW's assets, including Enhanced PROMIS, to a rival computer company controlled by Dr. Brian.

The Hamiltons have contended that high level officials in the Department of Justice conspired to steal the PROMIS software system. As an element of this alleged theft, these officials, which included former Attorney General Edwin Meese and Deputy Attorney General Lowell Jensen, forced INSLAW into bankruptcy by intentionally creating a sham contract dispute over the terms and conditions of the contract which led to the withholding of payments due INSLAW by the Department. After driving the company into bankruptcy, the Hamiltons have claimed that Justice officials attempted to force the conversion of INSLAW's bankruptcy status from chapter 11 to chapter 7. They have stated that this change in bankruptcy status would have resulted in the forced sale of INSLAW's assets, including PROMIS, to a rival computer company called Hadron, Inc., which at this time was attempting to conduct a hostile buyout of INSLAW. Hadron, Inc., was controlled by the Biotech Capital Corporation which was under the control of Dr. Earl Brian, who was president and chairman of the corporation. This is the same company in which Mrs. Ursula Meese had invested with money loaned to her by Mr. Edwin Thomas, a mutual friend and associate of Mr. and Mrs. Meese and Dr. Brian.¹⁰³ The Hamiltons have asserted that even though the attempt to change the status of INSLAW's bankruptcy case was unsuccessful, the Enhanced PROMIS software system was eventually provided to Dr. Brian. This was allegedly done by individuals from the Department with the knowledge and concurrence of then Attorney General Meese

¹⁰⁴ Report of the independent counsel concerning Edwin Meese III, September 20, 1994, pp. 14-35.

who had earlier worked with Dr. Brian in the cabinet of California Governor Ronald Reagan and later at the Reagan White House. According to the Hamiltons, the ultimate goal of the conspiracy was to position Hadron, Inc., and the other companies owned or controlled by Dr. Brian, to take advantage of the nearly 3 billion dollars' worth of automated data processing upgrade contracts planned to be awarded by the Department of Justice during the 1980's.

Mr. Meese and Dr. Brian served together in the cabinet of then California Governor Ronald Reagan from 1970 through 1974. Dr. Brian was the controlling shareholder in Biotech Capital Corporation which in turn had a substantial stake in a computer firm called Hadron, Inc. At that time, Dr. Brian was chairman and president of Biotech Capital Corporation and was on the board of directors of Hadron, Inc. The Hamiltons have asserted that after the election of 1980, Dr. Brian moved quickly to put Hadron, Inc., in a position to take advantage of ties to Mr. Meese and others in the newly elected administration. The Hamiltons have claimed that Hadron, Inc.'s first post-election moves were to acquire companies supporting Federal law enforcement efforts to control the smuggling of drugs across the Mexican border. Hadron, Inc., entered into several Government contracts with U.S. Customs and various intelligence agencies. The Hamiltons have claimed that in April 1983, Dominic Laiti, president and chairman of Hadron, Inc., contacted them and attempted to purchase Enhanced PROMIS. When they declined to sell PROMIS, he told them that he had ways of making them sell. The Hamiltons have alleged that Mr. Laiti also told them that as a result of contacts at the highest level of the Reagan administration, including Edwin Meese, Hadron, Inc., was able to obtain the Federal Government's case management software business. The Hamiltons have asserted that after declining to sell the PROMIS system, INSLAW became the target of a hostile buyout attempt.

The Hamiltons have alleged that after the Enhanced PROMIS software was stolen, it was illegally disseminated within the Department of Justice, to other Federal Government agencies and to governments abroad. This dissemination included the distribution of PROMIS to U.S. intelligence agencies, the FBI and the DEA. The Hamiltons have also claimed that the PROMIS software was sold to foreign governments for use by their intelligence and law enforcement agencies. The Hamiltons have strongly asserted that prior to PROMIS being distributed, it was modified by individuals connected with covert U.S. intelligence operations. These modifications possibly allowed for the creation of a "back door" into the system which would allow U.S. intelligence agencies to break into the systems of these foreign governments whenever they wished.

The Hamiltons have alleged that the Department furthered the conspiracy, when Department officials and others, including Judge Cornelius Blackshear, William Tyson, Thomas Stanton, Laurence McWhorter and William White, committed perjury and obstruction of justice during the investigation of the theft of PROMIS and during the trial in front of Judge Bason.

Former Attorney General Elliot Richardson, counsel to INSLAW, has described the circumstances surrounding the INSLAW case as

a possible criminal conspiracy involving Edwin Meese, Judge Lowell Jensen, Dr. Earl Brian and several current and former officials at the Department of Justice. Mr. Richardson has stated that the individuals involved in the theft of the PROMIS system, the subsequent coverup and its illegal distribution may have violated several Federal criminal statutes including: (1) 18 U.S.C. § 654 (officer or employee of the United States converting the property of another); (2) 18 U.S.C. § 1001 (false statements); (3) 18 U.S.C. § 1621 (perjury); (4) 18 U.S.C. § 1503 (obstruction of justice); (5) 18 U.S.C. § 1341 (mail fraud); and, (6) 18 U.S.C. § 371 (conspiracy to commit offense). Mr. Richardson also believes that the circumstances surrounding the INSLAW case fulfill the requirements necessary for prosecution under 18 U.S.C. 1961 et seq. (the Racketeer Influenced and Corrupt Organization—(RICO)—statute).¹⁰⁴

As discussed in the first section of this report, the committee investigation largely supports the findings of two Federal courts that the Department "took, converted, stole" INSLAW's Enhanced PROMIS by "trickery, fraud and deceit," and that this misappropriation had to involve officials at the highest levels of the Department of Justice. The Department deliberately ignored INSLAW's proprietary data rights, took the Enhanced PROMIS software and that were not entitled to use it under the Department's contract with the company. Certainly, this was a high risk venture in which Department officials had to have known would be vigorously challenged by the Hamiltons. Nonetheless, the Department expended enormous time, energy and money pursuing its conflict with INSLAW including almost 7 years of litigation. The Department took this course of action even though high level Justice officials knew, at least as early as 1986, that INSLAW had legitimate proprietary rights to the Enhanced PROMIS software and that the Department would not likely win the case in court on its merits. This raises the troubling question of why the Department would go to such great lengths to contest a relatively small \$10 million procurement when there are certainly more pressing criminal justice matters to attend to. The inability of the Department to provide a plausible answer to this key question has fueled concerns that a more sinister explanation exists.

While the Department continues to explain the INSLAW conflict as a simple contract dispute, the committee's investigation has uncovered or identified information which suggests a different and much more involved explanation.

B. ENHANCED PROMIS MAY HAVE BEEN DISSEMINATED NATIONALLY AND INTERNATIONALLY

After INSLAW became a for-profit organization, its business objective was to enhance revenues from the licensing,¹⁰⁵ sale or lease

¹⁰⁴ Memorandum to Special Counsel, Judge Nicholas J. Bua from Elliot L. Richardson, Esq., January 14, 1992, pp. 1-16.

¹⁰⁵ Courts have defined a "license" in the following ways:
"...a right granted which gives the grantee permission to do something which he could not legally do absent such permission; leave to do a thing which the licensor [the party granting the license] could prevent....[G]enerally speaking, [it] means a grant of permission to do a per-

Continued

ing of PROMIS and maintenance fees earned by its PROMIS software on a worldwide scale. INSLAW's international sales of PROMIS were conducted under the corporate name INSLAW International,¹⁰⁶ which licensed PROMIS in Ireland, Scotland, Australia, Holland and Italy.¹⁰⁷ Nationally, INSLAW's objective was to market PROMIS to state and local jurisdictions, the Federal Government, and private businesses such as law firms.¹⁰⁸

As previously discussed, INSLAW had long asserted—and was supported in the courts—that it owned proprietary rights to its enhanced version of PROMIS that were turned over to the Department in April 1983. It was the court's position that the Department stole and improperly distributed INSLAW's Enhanced PROMIS. Although later overturned by the Circuit Court, the Bankruptcy and District Courts held that the Department had violated an automatic stay and was liable for license fees for unlawfully using Enhanced PROMIS (as described in other sections of this report).¹⁰⁹ It also appears, however, that the Department's distribution of PROMIS may have gone far beyond its own boundaries because there are documentation and corroborating statements which indicate that PROMIS may have been distributed by Department officials to locations worldwide.

On April 15, 1983, Mr. Brick Brewer asked Mr. Jack Rugh, the Acting Assistant Director, OMISS, EOUSA, about any discussions that he may have had regarding the availability of the various Federal versions of PROMIS to organizations other than U.S. attorneys' offices. In a Department memorandum dated April 22, 1983, Mr. Rugh wrote that:

Since INSLAW made their claim of proprietary interest in our enhanced version of PROMIS, I have qualified the possibility of the availability of that version. Prior to that claim, I told several of the organizations discussed below, that EOUSA enhancements could be provided to them at some future date. [Emphasis added.]

As part of our solicitation for computer equipment, Government owned versions of PROMIS were made available to potential bidders for use in benchmarking their equipment. All four LEAA versions (DEC, IBM, Wang, and Burroughs) as well as the EOUSA Prime pilot version were supplied. . . . No restrictions were placed on the usage of that software. [Emphasis added.]

Also as part of our computer buy, a copy of the EOUSA Prime pilot version of PROMIS was supplied to Mr. Dave Hudak who contracted with us to develop certain bench-

mark programs. Again no restrictions were placed on software usage. [Emphasis added.]

mark programs. Again no restrictions were placed on software usage. [Emphasis added.]

In early 1982, I supplied a copy of the EOUSA Prime pilot version of PROMIS to Bob Bussey of the Colorado District Attorneys' Council, at Brick's [Brewer's] request. . . . Subsequently, I discussed the availability of our PROMIS enhancements, funded through the LEAA contract, once they were installed on our Prime equipment with Mr. Bussey. I also provided him with a copy of the LEAA DEC version of PROMIS in early 1983. [Emphasis added.]

I provided Jean Gollatz from the Pennsylvania State Government with a copy of our computer RFP in early 1982. . . . I have told Ms. Gollatz on several occasions that our Prime pilot version of PROMIS is available for their use, and that our enhanced Prime version should be available by mid-summer, 1983. [Emphasis added.]

I have discussed the availability of EOUSA Prime pilot version of PROMIS as well as the enhanced version with Don Manson of the Bureau of Justice Statistics on a number of occasions. Mr. Manson is particularly interested in providing a copy of our enhanced software to the U.S. Virgin Islands. [Emphasis added.]

During the week of April 11, 1983, INSLAW demonstrated PROMIS in the Boston U.S. attorneys' office to a group of people from the State of Massachusetts. Joe Creamer, our system manager in Boston, called me late in the week. He said someone from State [the State Government] had called him to ask about the availability of PROMIS software from sources other than INSLAW. I told Joe that the LEAA versions and our Prime pilot version were certainly available, but that there was a current dispute with INSLAW regarding our enhanced version. I do not know if Joe provided this information to the State. [Emphasis added.]

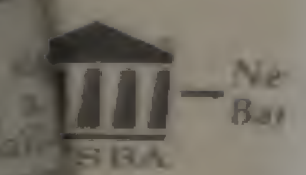
I have held a number of informal discussions with personnel in the Criminal Division regarding their possible use of our enhanced version of PROMIS and the possibility of their using one of our optional Prime machines. We have also discussed the possibility of cooperating on PROMIS software maintenance and enhancements in the future. [Emphasis added.]¹¹⁰

A Department memorandum also shows that the Department made at least the LEAA version of PROMIS available to an interested party from a foreign government. In a memorandum dated May 6, 1983, Mr. Rugh stated:

Reference my memorandum to file dated April 22, 1983, on the same subject. Brick Brewer recently instructed me to make a copy of an LEAA version of PROMIS available to Dr. Ben Orr, a representative of the Government of Israel. Dr. Orr called me to discuss that request after my earlier memorandum was written. I have made a copy of

¹¹⁰ Jack S. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, April 22, 1983.

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the LEAA DEC version of PROMIS and will provide it along with the corresponding documentation, to Dr. Orr before he leaves the United States for Israel on May 16. [Emphasis added.]¹¹¹

Given the international dimensions to the decisions, it is difficult to accept the notion that a group of low-level Department personnel decided independently to get in touch with the Government of Israel to arrange for transfer of the PROMIS software. At the very least, it is unlikely that such a transaction occurred without the approval of high level Department officials, including those on the PROMIS Oversight Committee. Interestingly, while Department documents show that "public domain" PROMIS was turned over to Israel, it is uncertain what version actually was transferred. Department managers believed that all versions of the Enhanced PROMIS software were the Department's property. The lack of detailed documentation on the transfer, therefore, only creates new questions surrounding allegations that Enhanced PROMIS may have been sold or transferred to Israel and other foreign governments. It certainly raises questions, discussed infra, about allegations surrounding Dr. Brian's involvement in the sale of Enhanced PROMIS to Israel. In particular, it has been asserted by several individuals¹¹² that the Enhanced PROMIS had been delivered to Dr. Brian for such a transfer by Mr. Videnieks. Mr. Videnieks was asked to provide a sworn statement to committee investigators on this subject, but to date committee attempts to arrange such a statement have been unsuccessful.¹¹³

By memorandum dated May 12, 1983, Mr. Rugh turned PROMIS over to Mr. Brewer for submission to the Government of Israel:

*Enclosed are the PROMIS materials that you asked me to produce for Dr. Ben Orr of the Government of Israel. These materials consist of the LEAA DEC PDP 11/70 version of PROMIS on magnetic tape along with the printed specifications for that tape, as well as two printed volumes of PROMIS documentation for the LEAA version of the system.*¹¹⁴ [Emphasis added.]

In a memoranda to Judge Bua, Elliot Richardson maintains that documentary evidence such as travel memoranda, reflect a plan by the U.S. Government for direct accessing of foreign government intelligence and enforcement activity:

One important motive for the theft of Enhanced PROMIS may have been to use it as a means of penetrat-

¹¹¹ Mr. Jack E. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, May 6, 1983.

¹¹² See section of the report titled, "The Allegations."

¹¹³ Mr. Videnieks provided an initial sworn statement to the committee on November 5, 1990. On March 21, 1991, Michael Rosencroft provided a sworn affidavit to the Hamiltons to which he described an alleged relationship between Mr. Videnieks and Dr. Brian. On March 23, 1991, he described an alleged relationship between Mr. Videnieks and Dr. Brian. On March 23, 1991, his attorney, Charles Ruff, in discussing these new allegations, Mr. Videnieks through that Mr. Videnieks would not agree to provide a second deposition. Subsequently, Mr. Ruff stated contacted on another occasion in which he again stated that Mr. Videnieks would not provide a second deposition. It should also be noted that at the Justice Department's request, Mr. Videnieks testified at the trial of Michael Rosencroft (see infra).

¹¹⁴ Mr. Jack E. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to C. Matheson Brewer, May 12, 1983. Also, note that this action took place after Modification 12 was signed on April 17, 1983, and the Enhanced PROMIS was turned over to the Department.

ing the intelligence and law enforcement agencies of other governments. The first step in this scheme was the sale to the foreign government of a computer into which had been inserted a microchip capable of transmitting to a U.S. surveillance system the electronic signals emitted by the computer when in use.... Enhanced PROMIS has capabilities that make it ideally suited to tracking the activities of a spy network.

Several INSLAW informants formerly affiliated with United States or Israeli intelligence agencies claim that both the United States and Israel have relied on "cutout" companies to provide ongoing support for the PROMIS software...¹¹⁵

In still another departmental memorandum, reference is found to making Enhanced PROMIS available to outside sources after the contracting officer had ruled against INSLAW's claims to the enhancements. As described in Mr. Rugh's August 12, 1983, memorandum:

On Wednesday, August 10, Don Manson called to inquire about the availability of our Prime [Enhanced] version of PROMIS for distribution to state and local organizations, specifically the Virgin Islands. I explained to Don that INSLAW had claimed that the U.S. attorneys' version of PROMIS contains proprietary software and cannot be distributed beyond the U.S. attorneys' organization. I told Don that even though I expected the dispute to be resolved in favor of the Government, we could not supply a copy of the software at this time. Don indicated that he planned to make a formal written request for the software, indicating an urgent need in the U.S. Virgin Islands. [Emphasis added.]¹¹⁶

It is uncertain whether this request was made and, if so, what the outcome was. Several individuals¹¹⁷ however, have provided sworn statements that Enhanced PROMIS was in fact distributed by the Department or its agents beyond EOUSA.

1. ALLEGATIONS THAT THE JUSTICE DEPARTMENT AND EARL BRIAN CONSPIRED TO DISTRIBUTE PROMIS

Several individuals¹¹⁸ have stated under oath that the Enhanced PROMIS software was stolen by high level Justice officials and distributed internationally in order to provide financial gain to Dr. Brian and to further intelligence and foreign policy objectives of the United States. While some of this testimony comes from individuals who, given their past activities and associations, might be viewed as less than credible, the committee has uncovered corroborating evidence supporting a number of the aspects of these wit-

¹¹⁵ Memorandum to Judge Nicholas Bua from Mr. Elliot Richardson, p. 34.

¹¹⁶ Mr. Jack E. Rugh, Acting Assistant Director, OMISS, EOUSA, memorandum to file, August 12, 1983.

¹¹⁷ These allegations are explored in depth in the section of the report entitled, "The Allegations."

¹¹⁸ Ibid.

nesses' sworn testimony.¹¹⁰ Although the committee's investigation could not reach a definitive conclusion regarding the motives behind the misappropriation of the Enhanced PROMIS software, the disturbing questions raised, unexplained coincidences and peculiar events that have surfaced throughout the committee's inquiry into the INSLAW case raises the need for further investigation.

Finally, as documented infra, the committee's investigation was unfortunately hampered by numerous obstacles which prevented it from conducting a complete review of several allegations during the investigation of the INSLAW case. This was particularly true of the allegations involving a possible criminal conspiracy by high level Government officials to steal, sell, and disseminate INSLAW's PROMIS software for secret or covert programs domestically and abroad.¹²⁰

Other events—including the arrest and conviction of a key informant and the death of a reporter covering the INSLAW matter—have only generated more questions about the INSLAW matter. Numerous potential witnesses refused to cooperate, for the stated reason that they were fearful for their jobs and retaliation by the Justice Department or that attempts had already been made to intimidate them against cooperating. Other witnesses directly contradicted the statements attributed to them by the Hamiltons and were clearly distressed that their names had been drawn into the web of the INSLAW conspiracy theory. Mr. Riconosciuto and others claimed to have direct knowledge of a conspiracy by high level Department officials to turn INSLAW's PROMIS software over to former Attorney General Meese's friend and former associate, Dr. Earl Brian.¹²¹ Finally, many witnesses have given conflicting and inconsistent testimony which may involve perjury and obstruction. The following is a brief discussion of these issues.

2. SWORN STATEMENT OF MICHAEL RICONOSCIUTO

Mr. Michael Riconosciuto, a self-described computer expert who in the past has been involved with contract computer and munitions work for U.S. intelligence agencies, was brought to the attention of the committee in June 1990. Mr. Riconosciuto alleged that he had access to information that clearly linked Dr. Earl Brian to

¹¹⁰ There is some measure of irony in the reaction of some current and former Department officials in their attempt to discredit automatically these allegations simply because of the past activities of certain witnesses who have worked "both sides" of the enforcement or intelligence communities. The Department showed no similar reluctance or moral fastidiousness in its recent prosecution of Manuel Noriega, which involved the use of over 40 witnesses, the majority of whom were previously convicted drug traffickers. Obviously, a witness' perceived credibility is not always indicative of the accuracy or usability in court of the information provided.

¹²⁰ The Department's unwillingness to allow congressional oversight into its affairs, in spite of an alleged cover-up of wrongdoing, greatly hindered the committee's investigation of the INSLAW allegations. The Department delayed and hindered congressional inquiries into the INSLAW matter over several years. This committee consumed almost 2 years and had to resort to a subpoena to obtain key information. Even then, key Department files subpoenaed by the committee were reported lost and other key investigative files are still being denied on the basis that these files contain criminal investigative material. The committee also encountered serious problems with obtaining cooperation from U.S. intelligence and law enforcement agencies. While some limited level of assistance was eventually provided from these groups, it often took months to arrange even minimum cooperation. The committee also encountered virtually no cooperation in its investigation of the INSLAW matter beyond U.S. borders. The Government of Canada refused to make its officials available to committee investigators for interviews without strict limitations on the questioning. Also, see discussion in section entitled, "INSLAW Request for Independent Counsel," for greater detail.

¹²¹ See section of report entitled, "The Allegations."

the Department's theft of Enhanced PROMIS software. Mr. Riconosciuto alleged that Dr. Brian was given the software as a reward for work he had done for the Reagan Presidential campaign.¹²² In a sworn statement to Mr. and Mrs. Hamilton, Mr. Riconosciuto stated that in the early 1980's both he and Dr. Brian were associated with the Wackenhut Corporation¹²³ to work on a covert project on the Cabazon Indian Reservation located near Indio, California.¹²⁴

On March 21, 1991, Mr. Riconosciuto provided the Hamiltons a sworn affidavit detailing his involvement with Dr. Brian and Peter Videnieks, the Department's contracting official. Mr. Riconosciuto stated that while employed by the Wackenhut Corporation he was involved with the modification of proprietary Enhanced PROMIS software during calendar years 1983 and 1984. Mr. Riconosciuto further stated that the software was provided to him by Dr. Brian, who had obtained it from Mr. Videnieks. Mr. Riconosciuto alleged that the software modifications were made to facilitate implementation of PROMIS software—in particular, porting PROMIS to the Police (RCMP) and the Canadian Security and Intelligence Service (CSIS). According to Mr. Riconosciuto, the modified PROMIS software was implemented by these agencies, and Dr. Brian brokered the sale to the Canadian Government.¹²⁵

In his March 21, 1991, affidavit, Mr. Riconosciuto stated that in February 1991, Peter Videnieks told him in a telephone conversation that it would be beneficial for him to refuse a committee request for an interview.¹²⁶

Despite the alleged interference by the Department, Mr. Riconosciuto provided a sworn statement to committee investigators on April 4, 1991. In his statement, Mr. Riconosciuto directly connected his involvement with modifying PROMIS to Dr. Brian and Mr. Videnieks. Mr. Riconosciuto also provided information concerning the February 1991 telephone conversation with Mr. Videnieks, which he referred to in his March 21, 1991, statement to the Hamiltons. Mr. Riconosciuto further alleged that he had in his possession two copies of the tape recorded conversation at the time of his arrest and that the tapes are currently in the possession of the DEA agents who arrested him.¹²⁷

Mr. Riconosciuto described his role and work with Dr. John Nichols and the Wackenhut/Cabazon joint venture.¹²⁸ According to Mr. Riconosciuto, Dr. John Nichols was the director of the Wackenhut/Cabazon joint venture in Indio, CA.¹²⁹ Mr. Riconosciuto said that Dr. Nichols and Mr. Brian worked closely on a variety of international projects; and, during the joint venture, Dr. Nichols was

¹²² Memorandum to the record, June 21, 1990, prepared by William A. and Nancy B. Hamilton, p. 1.

¹²³ The Wackenhut Corporation is an investigation and security firm based in Coral Gables, Florida. It has been alleged that Wackenhut has been contracted to conduct covert investigations and other covert projects.

¹²⁴ Sworn affidavit of Michael Riconosciuto, March 21, 1991, p. 2 (on file with the committee).

¹²⁵ *Ibid.*, p. 1. (Also see section on Canada, p. 109.)

¹²⁶ *Ibid.*, p. 3.

¹²⁷ Sworn statement of Michael Riconosciuto, April 4, 1991, pp. 59-71.

¹²⁸ The Wackenhut-Cabazon joint venture sought to develop and/or manufacture certain materials that are used in military and national security operations, including night vision goggles, machineguns, fuel-air explosives, and biological and chemical warfare weapons.

¹²⁹ Sworn statement of Michael Riconosciuto, April 4, 1991, pp. 5-6.

constantly being visited by "high profile people currently employed in various agencies of the United States Government. . . ." Mr. Riconosciuto further stated that Dr. Nichols was able to get him into secure areas of military facilities at Picatinny Arsenal during this venture.¹³⁰ According to Mr. Riconosciuto, he obtained access to secure areas in connection with the joint venture during 1981 and this was when he first met Mr. Videnieks. Mr. Riconosciuto claimed that he was given a copy of the proprietary version of INSLAW's PROMIS by Mr. Videnieks and Dr. Brian.¹³¹ Mr. Riconosciuto alleged that at that time Dr. Brian was spearheading plans for the worldwide distribution of PROMIS.¹³²

Mr. Riconosciuto granted the committee access to storage facilities where computer software¹³³ and documents were recovered by committee investigators.

Mr. Riconosciuto told committee investigators that Robert Booth Nichols could provide additional information concerning the Cabazon Indian Reservation and the conversion of the PROMIS software.¹³⁴ (See page 72.)

Dr. Brian's connection to former Attorney General Meese: Mr. Hamilton alleged in his affidavit and in testimony before this committee that Dr. Brian exploited a friendship with former Attorney General Meese to gain control of INSLAW's Enhanced PROMIS.¹³⁵ In their sworn statements to the committee, Mr. Meese and Dr. Brian stated that they had previously worked together as part of Ronald Reagan's cabinet while he was Governor of California, but their contacts since that time have been sporadic, limited, and social. Dr. Brian stated that he neither asked Mr. Meese to intercede on his behalf in any Government contracts nor did he discuss any Government contracts with him. Dr. Brian denied having any

¹³⁰ Ibid., p. 8.

¹³¹ During the sworn statement of Michael Riconosciuto on April 4, 1991, pp. 41-42, he stated that during a luncheon attended by Earl Brian, Peter Videnieks, James Hughes and Riconosciuto, the Enhanced PROMIS software was loaded into his car.

¹³² Ibid., p. 43.

¹³³ *Analysis of Riconosciuto tapes:* The committee requested that GAO analyze the tapes and disks received from Riconosciuto. On November 12, 1991, GAO reported to the committee that it could recover data from only one of the five magnetic media, which it provided to the committee. The tapes and disks were several years old and had been kept in unsuitable storage facilities. The magnetic media was dirt encrusted and warped possibly from the excessive heat and humidity. The readable media appeared to be a corporate data file of accounts containing primarily individual names and addresses and was neither encrypted, as had been alleged by an acquaintance of Riconosciuto, nor did it contain any versions of the PROMIS software. Lacking in-house expertise in repairing severely damaged media, GAO contracted with a professional engineering firm to:

(1) Perform an engineering evaluation of the four remaining media to determine whether they could be repaired to the point that data could be retrieved from them;
(2) repair the media, if possible; and
(3) retrieve any data found on the media.

By letter dated March 23, 1992, GAO reported on its work on the Riconosciuto media. GAO reported that all four of the damaged media were analyzed, but that only one contained readable data. According to GAO the readable media was a tape that contained what seemed to be instructions for installing a modification to what appeared to be a word processing software package. The format and command sequence, according to GAO, resembled those seen on non-IBM microcomputers. One disk appeared to contain some sort of instructions but could not be read.

¹³⁴ During a December 1991 telephone conversation with committee investigators, Robert Booth Nichols said that he (Nichols) and Michael Riconosciuto had worked together at the Cabazon Indian Reservation in the early 1980s. Robert Booth Nichols stated that he had been hired by John Phillip Nichols who worked with Mr. Riconosciuto on the joint venture. During this December telephone conversation, Robert Nichols requested that his associate Peter Zolowsky, an arms manufacturer, also be present during a future interview with committee investigators. Robert Nichols added that Mr. Zolowsky had also known Michael Riconosciuto. (Memorandum of interview of Mr. Nichols with committee.)

¹³⁵ Affidavit of William A. Hamilton, December 22, 1989, p. 7.

awareness of PROMIS during the time alluded to by Mr. Hamilton. Dr. Brian stated—based on advice from his counsel—that after Mr. Meese encountered problems during the 1984 independent counsel inquiry, he had no contact with Mr. Meese until after he resigned under a cloud as Attorney General in 1988. Dr. Brian further stated that he has had only a few conversations with Mr. Meese since then because their relationship had chilled.

There were, however, strong ties between Dr. Brian and Mr. Meese. An independent counsel investigation by Jacob Stein of Mr. Meese, initiated in April 1984, identified certain financial dealings involving Mr. and Mrs. Meese, Dr. Brian, and Mr. Edwin W. Thomas.¹³⁶ One major point of the investigation's focus was Mr. Meese's association with Dr. Brian, who was secretary of the agency for health and welfare in Governor Reagan's administration, and Mr. Edwin Thomas, who was a close friend of Dr. Brian and purchased stock in companies in which Dr. Brian was interested. Mr. Thomas loaned Mrs. Meese \$15,000 to purchase 2,000 shares of stock in a capital firm created and controlled by Dr. Brian.¹³⁷ Before he actually made the loan, Mr. Thomas was offered a position as Assistant Counselor to the President by Mr. Meese in or about late December 1980 or early January 1981.¹³⁸ Mr. Stein concluded that there was substantial uncontradicted evidence that the Counselor position was offered by Mr. Meese to Mr. Thomas based on a longstanding personal and professional relationship between the two men. Following the loan, Mr. Thomas was named chief of the General Service Administration's San Francisco, CA, regional office.

Dr. Brian made a \$100,000 loan to Mr. Thomas to fund the purchase of a Virginia townhouse during the same period; however, these funds were mostly used to purchase stock.¹³⁹ Mr. Meese stated that he knew Dr. Brian from Reagan's governorship and had seen him perhaps a dozen times from 1974 through 1984. During the first 2 years of the administration of President Reagan, Dr. Brian served as the Chairman of a White House Health Care Cost Reduction Task Force which reported to Mr. Meese. Dr. Brian, at either his or Mr. Thomas' behest, was nominated by the President to the National Science Board based on a recommendation by Mr. Meese.¹⁴⁰

This nomination was approved by President Reagan, but later withdrawn. In his sworn statement to the committee, Dr. Brian stated that the reason he did not receive the position was due to

¹³⁶ Report of Independent Counsel Concerning Edwin Meese III, September 20, 1984.

¹³⁷ In a March 21, 1984, Washington Post article, it was reported that sources close to Meese said he decided to invest in Biotech because of his confidence in the company's founder, Earl W. Brian. Additionally, in the early months of the Reagan administration, Biotech received a special exemption from the Small Business Administration (SBA) which enabled the firm to obtain \$5 million in federally guaranteed financing. The article also reports that this exemption was facilitated by a phone call from an aide of then Vice President Bush to SBA Administrator, Michael Cardenas. According to the March 21, 1984, article, before founding Biotech in 1979, Brian headed a firm called Xonics Inc. In 1977, while Brian was president, the Securities and Exchange Commission (SEC) cited the firm for making false and misleading statements to stockholders, charges that Xonics later settled in an SEC consent decree without admitting or denying the charges. This article also reported that the SEC accused the firm of violating the consent decree.

¹³⁸ Report of the Independent Counsel, op. cit., p. 72.

¹³⁹ Ibid., pp. 234-235.

¹⁴⁰ Ibid., p. 244. Also, Dr. Brian's application for this position listed Mr. Meese as his supervisor.

a personality conflict between himself and the head of the National Science Foundation. Information in the FBI background report and the independent counsel report prepared by Mr. Stein directly contradicted Dr. Brian's statement to the committee about the reason his appointment was withdrawn. According to the report of the independent counsel, Dr. Brian's name was withdrawn from consideration because of issues raised in the background report by the FBI. FBI records also indicate that Dr. Brian was a candidate for a White House position in 1974 and that nomination was withdrawn as well.

During an interview by committee investigators, a confidential law enforcement source,¹⁴¹ who previously had been a member of Governor Reagan's cabinet, stated that he personally knew Dr. Brian and was aware of his close relationship with Mr. Meese. The source also said that he was aware of a situation in the 1970's in which Dr. Brian was accused of using computer software owned by the State of California for his [Dr. Brian] personal gain.¹⁴² The committee's investigation revealed that in 1974, Dr. Brian was involved in a controversy over the use of 3,000 reels of computer tapes owned by the State of California. According to a news account in the Los Angeles Times,¹⁴³ these tapes were transferred to Dr. Brian under questionable circumstances which on the surface share some similarity with certain aspects of the INSLAW affair, as alleged by Mr. Hamilton.

The newspaper report stated that during the final days of Governor Ronald Reagan's administration, computer tapes were given to Dr. Brian under a no-cost contract awarded by then chief deputy director of the State of California Health Department, David Winston. Mr. Winston later became an employee of Dr. Brian's. After Governor Reagan left office, the new health director, Robert Gnaidza, held a news conference and stated he was canceling the contract, which entrusted the computer tapes to Dr. Brian, because the tapes were of incalculable value as a research tool and that handing them to Dr. Brian was, in effect, "a gift of public property for private purposes."¹⁴⁴ Dr. Brian apparently acknowledged having obtained the tapes, but he denied that the tapes were a gift to him. According to the news account, he stated:

The entire matter is a blatant political ploy intended to obfuscate the abortive Gestapo raid ordered by the [present] health director.¹⁴⁵

The independent counsel investigation did not include an inquiry into the possible connections between Mr. Meese and Dr. Brian, and the theft of Enhanced PROMIS.¹⁴⁶

¹⁴¹ Memorandum of interview on file with the committee.

¹⁴² Memorandum of interview on file with committee.

¹⁴³ February 14, 1975 edition, Los Angeles Times, "Ex-Health Director Defends Tapes Move," p. 3.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p. 3.

¹⁴⁶ Mr. Hamilton, in his affidavit, asserts that had their connection been known at the time, the independent counsel's investigation might well have included the theft of INSLAW's PROMIS software.

3. OTHER SOURCES ALLEGE WIDESPREAD DISTRIBUTION OF INSLAW'S ENHANCED PROMIS

Additional allegations of unauthorized distribution of INSLAW's Enhanced PROMIS software have been brought to the committee. Such allegations have been made by Charles Hayes (a surplus computer dealer), Ari Ben-Menashe and Juval Aviv (former Israeli intelligence officers) and Lester Coleman (self-professed writer and security consultant). These sources have stated that PROMIS has been illegally provided or sold to foreign governments including Canada, Israel, Singapore, Iraq, Egypt, and Jordan.¹⁴⁷

Where possible, the allegations were investigated to the extent possible. Yet, the committee's work was subject to great limitations in attempting to secure cooperation by both private and governmental sources. In some cases, the person or government providing the committee with information abruptly halted such cooperation, which had ostensibly begun in good faith. Such was the case with the Government of Canada. In other cases, individuals appeared to have withheld key documents which allegedly linked the Justice Department and CIA to the sale of the Enhanced PROMIS software internationally. The possible involvement of the CIA and foreign governments presented, in the end, insurmountable obstacles to the committee's attempts to thoroughly investigate the allegations raised in this matter. The CIA was not fully responsive to inquiries from the committee, and would, under no circumstances, provide the committee or GAO with the needed access to its files and personnel. Further, Congress is generally powerless to investigate allegations regarding activities outside the United States without the assistance of the host government. For these reasons, the information presented in the following sections is limited by the restrictive conditions that prevented a fully probative inquiry necessary to resolve a host of still unanswered questions and allegations surrounding INSLAW. Where possible, sworn statements were obtained from individuals alleging information on unauthorized PROMIS software distribution.

4. DOES THE GOVERNMENT OF CANADA HAVE THE PROMIS SOFTWARE?

During November 1990, the Hamiltons informed the committee that they received information from Mr. Marc Valois, a Canadian Government Department of Communications official, that INSLAW's PROMIS software was being used to support 900 locations throughout the Canadian Government.¹⁴⁸ During January 1991, the Hamiltons informed the committee they were told by Mr. Denis LaChance, a Canadian Government Department of Communications official, that the Royal Canadian Mounted Police (RCMP) was using INSLAW's PROMIS to support its field offices.¹⁴⁹

In a February 26, 1991, letter, the committee requested that the Ambassador of Canada, His Excellency Derek H. Burney, assist the

¹⁴⁷ In a sworn affidavit by Mr. Hamilton, allegations of other unauthorized distributions of Enhanced PROMIS have been made by unnamed U.S. Government officials. Mr. Hamilton contends that these sources, who will not come forward for fear of retribution, have alleged that PROMIS has been provided to agencies within and outside the Department of Justice including the Central Intelligence Agency (CIA), DEA and the FBI. Hamilton affidavit, December 22, 1989 (on file with the committee).

¹⁴⁸ Memorandum of interview on file with the committee.

¹⁴⁹ Sworn affidavit of Ms. Patricia C. Hamilton, Feb. 18, 1991, p. 2.

committee investigators in contacting knowledgeable Government officials to determine what version of the PROMIS software is being used by the Canadian Government. Subsequently, Mr. Jonathan Fried, Counselor for Congressional and Legal Affairs in the Canadian Embassy (Washington, DC), contacted the committee to express reluctance to fully cooperate with the committee because "Canadians had been burned once before by Congress." Mr. Fried insisted that the following specific conditions be met: (1) that interviews for individuals be conducted only in the presence of both the legal counsel for the Departments involved and their superiors; and (2) that no Canadian public servants would be witnesses in any foreign investigative proceedings. By letter dated March 19, 1991, the committee reluctantly agreed to the Canadian Government's conditions and identified Marc Valois and Denis LaChance as the two Canadian officials the committee wished to interview.

On March 22, 1991, committee investigators interviewed Mr. Valois and Mr. LaChance, the two Canadian officials who had alleged that the Canadian Government was using INSLAW's PROMIS software. Prior to the questioning of the two witnesses, the Government's counsel informed committee investigators that Mr. Valois and Mr. LaChance could only respond to questions specifically addressing the PROMIS software. He further stated that these two officials would not respond to questions concerning any allegation that four software programs that may have been acquired by the Canadian Government may be derivatives of the PROMIS software. The Canadian counsel informed the committee investigators that the committee would have to request in writing any information concerning the Canadian Government's involvement relating to the four software programs alleged to be derivatives of PROMIS.¹⁵⁰

Mr. Valois and Mr. LaChance stated that they had incorrectly identified INSLAW's PROMIS as the software being used by the Canadian Government. They further stated that, the PROMIS software identified to the Hamiltons as being their product was actually a project management software also named "PROMIS," developed by the Strategic Software Planning Corporation.¹⁵¹ They also denied any knowledge, or use, of a derivative of INSLAW's PROMIS. Subsequently, the president of the Strategic Software Planning Corporation acknowledged in a sworn statement to committee investigators that his company had sold a few copies of his firm's PROMIS software to the Canadian Government in May 1986.¹⁵²

By letter dated October 23, 1991, to the Canadian Ambassador, the committee again requested full cooperation with the committee's investigation. The Canadian Government was requested to provide information regarding software packages allegedly being used by the RCMP and CSIS identified as derivatives of INSLAW's Enhanced PROMIS by the Hamiltons. Additionally, it was requested that investigators be provided the names of knowledgeable

¹⁵⁰ Memorandum of interview on file with committee.
¹⁵¹ Interviews of Mr. Marc Valois, Mr. Denis LaChance, March 22, 1991, pp. 7 and 4, respectively, and Mr. Ed Removitz, March 7, 1991, pp. 4-8.
¹⁵² Sworn statement of Mr. Massimo Grimaldi, president of Strategic Software Planning Corporation, March 19, 1991, pp. 9-10.

RCMP and CSIS personnel who could provide insight into the software used by these agencies.

On December 4, 1991, the Ambassador responded by letter that neither the RCMP nor the CSIS were using INSLAW's PROMIS software. He further stated that none of the software packages believed to be derivatives of PROMIS were in use by any branch of the Canadian Government. According to the Ambassador:

...The RCMP and CSIS reported...they do not use any case management software...¹⁵³

The Ambassador's conclusory statement did not provide an offer or an opportunity for further verification of the allegations received concerning the Government of Canada.¹⁵⁴ Without direct access to RCMP, CSIS and other Canadian officials, the committee has been effectively thwarted in its attempt to support or reject the contention that INSLAW software was transferred to the Canadian Government.

5. DID THE CIA ASSIST IN THE SALE OF PROMIS?

On November 20, 1990, Chairman Brooks wrote to CIA Director, William H. Webster, requesting that the Agency:

...cooperate with the committee by determining whether the CIA has the PROMIS software or any derivative and to have the knowledgeable person or persons available for interviews by committee investigators...

On December 11, 1990, the CIA's Director of Congressional Affairs, Mr. E. Norbert Garrett, responded that:

We have checked with Agency components that track data processing procurement or that would be likely users of PROMIS, and we have been unable to find any indication that the Agency ever obtained PROMIS software.

The chairman notified the CIA on February 15, 1991, that the committee appreciated the initial inquiry performed by Mr. Garrett. The chairman stated, however, that a more thorough and complete review was needed to determine if the PROMIS software or a derivative is, or has ever been, in the possession or control of the Agency, or any of its contractors, consultants, and operatives.

The chairman advised the Director that the committee received information that, in 1983, the Agency began operating a "floating point system" that operates a "Data Point" software program al-

¹⁵³ Letter from His Excellency Derek H. Burney, Ambassador of Canada to the Honorable Jack Brooks, December 4, 1991, p. 2.

¹⁵⁴ Although the Canadian Government has continued to deny that it has INSLAW's PROMIS software, information continues to surface indicating the opposite to be true. As recently as April 1992, reports of the use of the PROMIS software by the Canadian Government have been aired through the written and televised media. These media releases include a 1-minute report on CJOH, Ottawa titled, "RCMP Using Stolen INSLAW Software;" an April 16, 1992, article in a Canadian magazine titled "Out of Canada;" an article on March 3, 1992, in a Canadian newspaper titled, "The Globe and Mail;" and a February 28, 1992 article in the Canadian newspaper titled, "The Financial Post."

Of particular interest is a report that Statistics Canada, a Canadian governmental agency, recently admitted previous use of a public domain version of the INSLAW's PROMIS software. According to officials contacted by William Hamilton, the version of the software that had been used was obtained through the LEAA in the late 1970's. (See memorandum of interview on file with the committee). While the use of this version of the PROMIS software would be legal, the Canadian Government had previously denied any knowledge of the use of INSLAW's PROMIS software by any of its agencies.

leged to be a derivative of PROMIS.¹⁵⁶ The chairman also informed the Director that it has been alleged that the PROMIS software might also be operating under the name "Data Plus" or "PROMIS Plus" and it might currently be used at military intelligence locations. The chairman stated that the committee had also received information that the CIA may have assisted the Egyptian Government in acquiring this software through the Foreign Military Assistance Program (MAP). Finally, in the letter dated February 15, 1992, the chairman inquired of the Director whether the CIA had awarded several contracts to Dr. Earl Brian, or a company called Hadron, Inc.

Several months after the chairman's February 15, 1991, letter, the committee staff met with CIA representatives. They indicated that after an extensive search within the Agency, no versions of the PROMIS software were found. They also indicated that they checked specifically to see if the software had been supplied to the Government of Egypt and that no evidence of this transaction occurring exist at the Agency.¹⁵⁶

A letter dated November 18, 1991, was received from the CIA Deputy Director, Richard Kerr, who denied that the Agency had any versions of INSLAW's PROMIS software. He further stated that the PROMIS software currently being used by CIA components was manufactured by Strategic Software Planning Corporation of Cambridge, MA. (This is the same firm that sold its PROMIS software to the Canadian Government, described in a previous section.) Mr. Kerr also stated that the Agency has had some contracts with Hadron, Inc., but they were not related to PROMIS and that the Agency had no record of being in contact with Dr. Earl Brian in connection with any of these contracts.¹⁵⁷ The Deputy Director also denied that the CIA assisted the Egyptian Government in acquiring INSLAW's PROMIS or similar software.¹⁵⁸ He, however, added an important caveat:

Of course, we have no way of knowing whether any Agency contractors at some point ever acquired PROMIS software, but none did so on behalf of the Agency. Moreover, although we have no indication that any such acquisition took place, we cannot rule out the possibility that an Agency employee acting on his own behalf and without any official authorization or funds acquired PROMIS for his own personal use.¹⁵⁹

¹⁵⁶ In a conversation with committee investigators, William Hamilton provided information he had obtained from Charles Hayes and Juval Aviv, regarding the distribution of the PROMIS software domestically and internationally. (See December 22, 1989, affidavit of William Hamilton, on file with the committee.) In this conversation, Mr. Hamilton stated that the PROMIS software was distributed to the CIA. For greater detail see the section of the report titled, "The Allegations."

¹⁵⁷ In addition, at that meeting, and as a result of information received from several sources (refer to the section of the report titled, "The Allegations") subsequent to the February 15, 1991, letter, committee investigators inquired whether a number of other countries, including Israel, Jordan, Singapore, Canada, Iraq and Iran, had received PROMIS software. To date, no response has been received from the CIA.

¹⁵⁸ Dr. Brian, in his sworn statement of September 20, 1990, described the business relationship between Hadron and the U.S. Navy, the intelligence community, and specifically the CIA. He indicated that Hadron had 30-40 Federal Government contracts with the "intelligence community" (pp. 23-27).

¹⁵⁹ Letter to the Honorable Jack Brooks from Richard J. Kerr, Deputy Director CIA, November 18, 1991, pp. 1, 2, and 3.

Thus, the CIA has not fully addressed the questions raised in the chairman's February 15, 1991, letter. While the CIA indicated that they could not locate PROMIS within the Agency, the Agency itself acknowledged that this did not preclude independent contractor usage.

In response to the allegation that the Egyptian Government obtained INSLAW's Enhanced PROMIS software using Foreign Military Assistance Program funds between 1980 and 1990, the committee requested GAO to determine if this fund was used to assist in the purchase of the software.¹⁶⁰ On June 14, 1991, following a study by its National Security, International Affairs Division, GAO advised the committee that their review failed to produce evidence supporting the allegation regarding the purchase of the PROMIS software by the Egyptian Government.¹⁶¹ During discussions with the GAO evaluators who conducted the study, the committee learned that MAP funds cover broad categories which make it extremely difficult to identify individual purchases.

6. ALLEGATIONS OF PROMIS DISTRIBUTION TO AGENCIES WITHIN THE DEPARTMENT

During this investigation, the committee received allegations that the Drug Enforcement Administration had been mandated to use the PROMIS software. Allegations were also made that the FBI Field Office Information Management System (FOIMS) is based on INSLAW's PROMIS software.

In August 1990, the committee inquired into an allegation that the DEA had been mandated to use PROMIS software. This allegation originated from the former DEA Deputy Assistant Administrator for Planning and Inspections, Carl Jackson, who told committee investigators that, in 1988, Attorney General Richard Thornburgh ordered DEA to install PROMIS software. He stated that he recalled some discussion during a monthly ADP Executive Committee of senior DEA officials in late 1988 or early 1989 concerning the mandate.¹⁶² However, DEA eventually developed a case tracking system called CAST (Case Status System).¹⁶³ The committee investigators reviewed the minutes of the ADP Executive Committee monthly meetings conducted in late 1988 and early 1989. The review disclosed no evidence that PROMIS was discussed,¹⁶⁴ but did corroborate DEA's plan to implement CAST.

With regard to the allegations concerning the FBI, committee staff inquired into charges made by Mr. Terry Miller, president of

¹⁶⁰ Letter from the Honorable Jack Brooks to Honorable Charles Bowsher, Comptroller General of the United States, January 17, 1991.

¹⁶¹ Letter report to the Honorable Jack Brooks from Mr. Joseph Kelley, Issue Area Director for Security and International Relations, GAO, June 14, 1991.

¹⁶² Memorandum of interview of Mr. Carl Jackson, August 31, 1990 (on file with the committee).

¹⁶³ Ibid.

¹⁶⁴ Copies of minutes of the ADP Executive Committee Meetings, December 1988 through March 1989.

government sales, Consultants, Inc.¹⁶⁸ On January 9, 1991,¹⁶⁹ Mr. Miller informed FBI Director William Sessions that he had reason to believe that the software system, FOIMS, used throughout the FBI to track cases, had been stolen from INSLAW. He offered the FBI what he called a simple solution to determine the truth of his allegation—a "code compare" between PROMIS and FOIMS. The FBI's January 25, 1991, response to Miller's allegation was in the nature of an unresponsive form letter.¹⁶⁷ In his February 5, 1991, response to the FBI, Mr. Miller accused the FBI of being very defensive. Mr. Miller further stated that the FBI had requested that he provide, among other things, descriptions of the victim and the thief, if any.

In a February 11, 1991, letter, the FBI's Deputy Assistant Director for the Technical Services Division responded to Mr. Miller.¹⁶⁸ The Deputy Assistant Director stated that he conferred with the Department's attorney handling the INSLAW matter and determined that the Federal courts were the appropriate forum for adjudicating his concerns.

On June 7, 1991, the FBI followed up with another letter to Mr. Miller.¹⁶⁹ In this letter the Assistant Director for the Inspections Division pointed out that they would need additional information before the FBI's OPR could assess the substance of his allegation. On June 13, 1991, Mr. Miller responded that he did not know if FOIMS contained stolen software, but that several people had claimed that FOIMS contains software stolen from INSLAW.¹⁷⁰ Mr. Miller reiterated that it would be rather easy to do a code compare between PROMIS and FOIMS to resolve this issue.

It is the committee's understanding that no code comparison has been made between FOIMS and PROMIS to determine if there is any similarity.¹⁷¹ FBI officials did inform committee investigators that the Bureau began developing FOIMS in-house around 1978 and that in 1981 the Bureau decided to use the ADABAS¹⁷² data base management system.¹⁷³ These officials provided documentation to the committee which indicated that implementation at the first pilot office began during 1979, and that implementation of FOIMS at all FBI field offices began in 1985 and was completed in 1989.

¹⁶⁸ Mr. Miller is a 32-year veteran of the computer business. His interest in this matter resulted from his belief that INSLAW was being unfairly treated by the Department. In a series of letters to the FBI, he requested that the FOIMS system be compared to INSLAW's PROMIS software. Additionally, he has requested that he be given permission to perform the comparison. To date, the FBI has failed in his view to satisfactorily answer his questions. Mr. Miller and a INSLAW confidential informant, who is a career official in the Justice Department, have both provided information to the Hamiltons which alleged the use of INSLAW's PROMIS software by the FBI. The Department official alleged he was told by John Otto, former Acting Director of the FBI, that FOIMS is based on INSLAW's PROMIS software.

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¹⁷⁵ ADABAS (Adaptable Data Base System) is a relational data base management system with a number of utility programs.

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According to the FBI, INSLAW demonstrated its PROMIS software in 1982 and at that time the Bureau's technical support personnel determined that the PROMIS would not meet the agency's requirements. The FBI concluded that, to use INSLAW's PROMIS, the Bureau would need to spend a considerable amount of time and money to modify and/or convert existing systems to accommodate the new software. While there is no specific evidence that PROMIS is being used by the FBI, the matter could be resolved quickly if an independent agency or expert was commissioned to conduct a code comparison of the PROMIS and FOIMS systems.¹⁷⁴

However, by letter dated July 7, 1992, Judge Bua stated to INSLAW counsel Elliot Richardson that he had decided to "retain my own expert to conduct the examination necessary to compare the software."¹⁷⁵ This action followed the FBI Director's agreement to fully cooperate with a comparison of the FOIMS software to INSLAW's PROMIS, with a number of conditions that included:

The examiner must advise the FBI of any FOIMS software code which, in his or her judgment, was derived from the enhanced version of PROMIS. This notification will provide the FBI with an opportunity to document the existence of the questioned software code to avoid possible subsequent disputes.¹⁷⁶

7. RONALD LEGRAND DENIES INSLAW'S ASSERTIONS

The committee received allegations that Ronald LeGrand, former DEA agent, former chief investigator for the Senate Judiciary Committee, and a lawyer, had received crucial information about INSLAW matters from a trusted source who was a senior Department career official "with a title" whom Mr. LeGrand had known for 15 years.¹⁷⁷ In the *Third Supplemental Submission of INSLAW in Support of Its Motion to Take Limited Discovery* (Bankruptcy case No. 85-00070), counsel for INSLAW states:

INSLAW had sought to depose these officials because of highly specific allegations that Mr. Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, had

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conveyed to William A. and Nancy B. Hamilton, the principal owners of INSLAW, in May 1988.

According to LeGrand, a trusted source, described to the Hamiltons as a senior DOJ official with a title, had alleged that the two senior Criminal Division officials were witnesses to much greater malfeasance against INSLAW than that already found by the Bankruptcy Court, malfeasance on such a more serious scale than Watergate. LeGrand told the Hamiltons that D. Lowell Jensen did not merely fail to investigate the malfeasance of Videnieks and Brewer but instead had "engineered" the malfeasance "right from the start" so that INSLAW's software business could be made available to political friends of the Reagan/Bush administration.¹⁷⁸

Because of the seriousness and specificity of the allegations, committee investigators invested considerable effort in obtaining cooperation from Mr. LeGrand. After 5 months of negotiations, Mr. LeGrand was interviewed by committee investigators on May 31, 1990.¹⁷⁹ Mr. LeGrand was asked to identify the "trusted source" so that committee investigators could contact this person to obtain his knowledge of the INSLAW matter. Mr. LeGrand stated that he would contact his source and determine whether he was willing to be interviewed. Mr. LeGrand was also asked if he would provide a sworn statement, and he indicated that he would if the committee made a request to Chairwoman Cardiss Collins of the House Government Operation's Subcommittee on Government Activities and Transportation.¹⁸⁰ Pursuant to Mr. LeGrand's request, Chairman Brooks wrote to Chairwoman Cardiss Collins on July 20, 1990. The chairman requested that committee investigators be allowed to obtain a sworn statement from Mr. LeGrand concerning his knowledge of the INSLAW matter.

After receiving an affirmative response from Chairwoman Collins, committee investigators made numerous attempts to schedule a sworn statement from Mr. LeGrand, to no avail. Mr. LeGrand then left the Washington DC, area without informing the committee. Once Mr. LeGrand was located, the committee wrote to him on November 20, 1990, and renewed its request that he cooperate with the committee by providing a statement under oath. On February 14, 1991, Mr. LeGrand provided a sworn statement to committee investigators.¹⁸¹ During this statement Mr. LeGrand provided little corroboration of the Hamilton's allegations. According to Mr. LeGrand, the first problem with the remarks attributed to him was the unintentional merging of comments from different persons which the Hamiltons had attributed to Mr. LeGrand's "trusted source." Mr. LeGrand stated that he gathered information from several individuals during his inquiry into the INSLAW matter. However, Mr. Hamilton attributed all the information he had received from Mr. LeGrand as coming from his "trusted source."

¹⁷⁸ Third Supplemental Submission of INSLAW in Support of Its Motion to Take Limited Discovery, dated March 23, 1991, p. 2.

¹⁷⁹ Memorandum of interview on file with the committee.

¹⁸⁰ Mr. LeGrand left the Senate Judiciary Committee and joined the House subcommittee in October 1990.

¹⁸¹ Sworn statement on file with the committee.

Mr. LeGrand, however, stated that his trusted source provided the following information pertaining to the INSLAW matter:

Then Deputy Attorney General Lowell Jensen was going to award the case tracking software business to friends.¹⁸²

Jensen relied on some of the most senior political and career officials in both the Criminal Division and the Justice Management Division to carry out this plan.¹⁸³

Other senior Criminal Division officials not involved in the alleged wrongdoing have knowledge of it and are upset about it but are unwilling to expose themselves to possible reprisals by coming forward with what they know.¹⁸⁴

Mr. LeGrand was asked whether his source provided the following statement as described by INSLAW counsel in the Bankruptcy Court proceedings:

Shortly after DOJ's public announcement on May 6, 1988, that DOJ would not seek the appointment of an independent counsel in the INSLAW matter and that it had cleared Mr. Meese of any wrongdoing, the source told Mr. LeGrand that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth."

Mr. LeGrand responded that his source indicated that there was more to this than people were currently aware of and that there was a comparison to Watergate; however, he did not recall reference to the date or the phrase "both in its breadth and in its depth."¹⁸⁵

Mr. LeGrand was again asked to provide the name of his source and to date he has refused to do so.¹⁸⁶

At the Department's request, Mr. LeGrand later submitted an affidavit refuting INSLAW's claim. In the affidavit, Mr. LeGrand stated, "...I did not convey 'highly specific' allegations to Mr. or Mrs. Hamilton. Instead, I told them of general allegations, rumors, I had heard from different sources about various persons within the Department of Justice."¹⁸⁷ After several years of making statements to William Hamilton, the Senate Permanent Subcommittee on Investigations, and this committee, Mr. LeGrand's latest affidavit was striking in its assertion that his source had no personal knowledge of the Department's handling of the INSLAW matter.

8. THE ALLEGATORS

The following is a discussion of the evidence provided by several additional individuals who claim to have detailed and, in some cases, firsthand knowledge of the Justice Department's alleged con-

¹⁸² Sworn statement of Ronald LeGrand, February 14, 1991, pp. 20, 46, 52.

¹⁸³ Ibid., p. 20.

¹⁸⁴ Ibid., p. 21.

¹⁸⁵ Ibid., p. 41.

¹⁸⁶ Ibid., p. 82.

¹⁸⁷ INSLAW, Inc. v. United States, Bankruptcy Case No. 85-0070, Declaration of Ronald LeGrand. Mr. Hamilton later alleged to the committee that Roger Pauley was LeGrand's contact and trusted source within the Department. Mr. Pauley is the Director of the Office of Legislation in the Criminal Division. Mr. Pauley denied that he has had contact with Mr. LeGrand while he was with the Senate Judiciary. Mr. Pauley stated that he never told LeGrand that Judge Jensen engineered INSLAW's problems with the Department or any of the other statements attributed to Mr. LeGrand's source.

aspiracy to steal and to transfer or sell the PROMIS software to foreign intelligence or other parties. Not all individuals would provide sworn testimony regarding their charges. Obviously, greater weight has been given to those who provided sworn statements or affidavits to the committee.

Ari Ben-Menashe Allegations: Mr. Ben-Menashe stated under oath that he is a former Israeli intelligence officer who served in the Israeli Defense Forces and the Israeli Prime Minister's office from August 1977 through November 1989. During an initial interview with committee investigators, in February 1991, Mr. Ben-Menashe stated that he wanted to cooperate but only after the committee agreed to meet certain conditions. Mr. Ben-Menashe explained that he was in the United States by virtue of a visa that was due to expire and he asked that the committee: (1) Arrange for a visa extension and (2) provide him immunity from any prosecution relating to the information and documents he possessed regarding the illegal distribution and/or sale of Enhanced PROMIS by Dr. Earl Brian to the Israeli Government. The request was refused. On May 29, 1991, Ben-Menashe provided a sworn statement without any conditions.¹⁸⁸

Mr. Ben-Menashe stated that, in 1982, Dr. Earl Brian and Robert McFarland, the former Director of the National Security Council, provided the public domain version of INSLAW's PROMIS software to the Israeli Government's special intelligence operation Defense Forces.¹⁸⁹ Mr. Ben-Menashe stated under oath to committee investigators that he was also present in 1987 when Dr. Brian sold Enhanced PROMIS to the Israeli intelligence community and the Singapore Armed Forces and that, after these sales were completed, approximately \$5.5 million was placed in a foreign bank account to which Earl Brian had access.¹⁹⁰ Mr. Ben-Menashe further stated under oath that Earl Brian sold a "public domain" version of the PROMIS software to the military intelligence organizations of Jordan in 1983 and to the Iraqi Government in 1987.¹⁹¹

Mr. Ben-Menashe stated during his sworn statement to the committee that he has information about the sale of a "public domain" version of PROMIS by the Israeli Government to the Soviet Union in 1986 and the sale of the enhanced version to the Canadian Government coordinated by Earl Brian.¹⁹² Mr. Ben-Menashe also stated that various unnamed Israeli officials would corroborate his statements. He refused, however, to identify these officials or provide evidence to corroborate his statements unless he was called as an official witness for the committee under a grant of immunity.¹⁹³

Charles Hayes Allegations: Mr. Hayes is a surplus computer dealer with alleged ties to both United States and foreign intelligence communities. Mr. Hayes first came to the attention of the committee during August 1990, following assertions that excess Harris-Lanier word processing equipment he had purchased from the U.S.

¹⁸⁸ Interview with Ari Ben-Menashe, February 5, 1991, (on file with the committee).
¹⁸⁹ Sworn statement of Mr. Ben-Menashe, May 29, 1991, pp. 6 and 14, on file with the committee.
¹⁹⁰ Ibid., pp. 3, 4, and 14.
¹⁹¹ Ibid., pp. 14, 15, and 20. In his sworn statement, Mr. Ben-Menashe stated that the sale of PROMIS to Iraq by Dr. Brian was brokered by an alleged international arms dealer named Carlos Cardenas of Miami, FL, and Chile.

¹⁹² Ibid., pp. 11, 12, and 26.
¹⁹³ Ibid., p. 3.

attorney's office for the Eastern District of Kentucky, located in Lexington, contained the PROMIS software.¹⁹⁴ Mr. Hayes stated that the U.S. attorney's office had provided him 5 1/4-inch computer disks when he purchased the excess equipment and that he believed these disks contained INSLAW's Enhanced PROMIS software.¹⁹⁵

On November 28, 1990, the committee chairman wrote to the Department requesting access to the equipment and documents seized under a search warrant served on Charles Hayes. The chairman also requested files concerning the dispute between Mr. Hayes and the Department from the Civil Division attorney handling the case. On February 12, 1991, W. Lee Rawls, Assistant Attorney General, Office of Legislative Affairs, responded to the chairman that:

... we can arrange for the committee staff to see the equipment and examine the manuals and other documents that were retrieved with the equipment pursuant to a civil writ of possession. We cannot, however, either arrange for committee staff to operate the equipment or provide the committee with a print-out of the information contained in the equipment, as informally requested by committee staff on January 31, 1991. We do not yet have a complete print-out of the information contained in the equipment. Moreover, disclosure of this information would compromise an ongoing criminal investigation.

Mr. Rawls also stated that:

We cannot arrange for committee access to certain documents in the Civil Division files because their disclosure might adversely impact a pending criminal investigation relating to this matter. These include non-public witness statements prepared by the witnesses, portions of Civil Division attorney notes of witness statements, Civil Division attorney notes about conversations with Criminal Division prosecutors, drafts of pleadings and memoranda that would disclose thought processes of the Criminal Division attorneys, and other material that could compromise the pending criminal investigation. We also are unable to disclose the exhibits that were sealed by the court.¹⁹⁶

On February 13, 1991, Mr. Hayes provided a sworn statement to the committee attesting to his assertions. During the statement Mr. Hayes explained that he believed the PROMIS software had been copied onto the disks from the original PROMIS software by

¹⁹⁴ GAO has established that the equipment Mr. Hayes purchased did contain sensitive information. On June 27, 1991, Milton J. Socolar, Special Assistant to the Comptroller General, testified before the Subcommittee on Economic and Commercial Law that:

"We previously testified about a Justice security breach last summer at Lexington, Kentucky. [Justice's Weak ADP Security Compromises Sensitive Data (Public Version) GAO/MTEC-91-6, Mar. 21, 1991] Computer equipment excessed by the U.S. attorney's office was later found to contain highly sensitive data, including grand jury material and information regarding confidential informants. How this could have happened is disturbing in itself, but even more shocking is that it happened again. As recently as this past February, a different U.S. attorney's office cautioned Federal and local officials that, again, sensitive information that could potentially identify agents and witnesses might have been compromised."

¹⁹⁵ Sworn statement of Mr. Charles Hayes, February 13, 1991, pp. 5 and 23, on file with the committee.

¹⁹⁶ Letter to the Honorable Jack Brooks from Mr. W. Lee Rawls, Assistant Attorney General, Department of Justice, February 12, 1991, pp. 2 and 3.

personnel at the U.S. attorney's office. At this time, Mr. Hayes gave the disks and related material to committee investigators.¹⁹⁷ Committee investigators identified the 5¼-inch disks and related materials as nothing more than training programs for the Lanier computers used by the Lexington office. Mr. Hamilton told committee investigators that it was "highly implausible" that the 5¼-inch disks would contain Enhanced PROMIS. Mr. Hamilton further stated that if PROMIS was being used on the Lanier word processing equipment, it would have to be the public domain version which is not the subject of the legal dispute with the Department. Mr. Hayes continued to have frequent conversations with Mr. Hamilton and his attorneys. Mr. Hamilton provided the committee staff a memorandum, dated October 22, 1990, that memorialized several telephone conversations in which Mr. Hayes allegedly told Mr. Hamilton that:¹⁹⁸

He can identify about 300 places where the PROMIS software has been installed illegally by the Federal Government.

Dr. Brian sold PROMIS to the Central Intelligence Agency in 1983 for implementation on computers purchased from Floating Point Systems and what the CIA called PROMIS "Datapoint."

Dr. Brian has sold about \$20 million of PROMIS licenses to the Federal Government.

Department officials hinted to CIA officials that they should deny that they are using PROMIS.

In addition, Mr. Hayes repeated to committee investigators on numerous occasions many of the same claims that were contained in Mr. Hamilton's October 22, 1990, memorandum. Mr. Hayes also told committee investigators that he had received information from unnamed sources within the Canadian Government that Dr. Brian sold the PROMIS software to the Canadian Federal Government in 1987. He made numerous promises to committee investigators that the documentation regarding these sales by Dr. Brian would be provided to the committee by the unnamed Canadian officials. However, on August 16, 1991, Mr. Hayes stated that the Canadian officials decided not to cooperate with the committee.

While these allegations are intriguing, Mr. Hayes has not provided any corroborating documentation.

Lester K. Coleman. As part of the bankruptcy proceeding involving INSLAW a sworn affidavit was obtained from Lester K. Coleman. (Adversary Proceeding No. 86-0069.) Mr. Coleman described himself as a freelance writer, editor and security consultant, who, in 1988, was an employee of the Defense Intelligence Agency. Mr. Coleman stated that during April and May 1988, he worked with Eurame Trading Company, Ltd., a DEA proprietary company in Nicosia, Cyprus. Mr. Coleman said that at that time he found that the DEA was using the trading company to sell computer software called "PROMISE" or "PROMIS" to drug abuse control agencies in Cyprus, Pakistan, Syria, Kuwait, and Turkey. Mr. Coleman also said that he witnessed the unpacking of reels of computer tapes

¹⁹⁷ Sworn statement of Mr. Charles Hayes provided to committee investigators on February 13, 1991, at Lexington, KY (on file with the committee).
¹⁹⁸ Memorandum from Mr. William Hamilton to Mr. Elias Richardson, Esq., and Mr. Charles Work, Esq., October 22, 1990, pp. 1-2, on file with the committee.

and computer hardware at the Nicosia Police Force Narcotics Squad. The boxes bore the name and red logo of a Canadian corporation with the words "PROMISE" or "PROMIS" and "Ltd." According to Mr. Coleman, the DEA's objective in aiding the implementation of this "PROMIS(E)" system in these Middle East countries' drug abuse control agencies was to augment the United States' ability to access sensitive drug control law enforcement and intelligence files.

Mr. Coleman further stated that a DEA Agent (Country Attaché), was responsible for both the Eurame Trading Company, Ltd., and its initiative to sell "PROMIS(E)" computer systems to Middle East countries for drug abuse control. Mr. Coleman stated to the court under oath that he believed the agent's reassignment in 1990 to a DEA intelligence position in the State of Washington prior to Michael Riconosciuto's March 1991 arrest there on drug charges was more than coincidental. Mr. Coleman stated he believes that the agent was assigned to Riconosciuto's home State to manufacture a case against him. Mr. Coleman stated he believes this was done to prevent Mr. Riconosciuto from becoming a credible witness concerning the U.S. Government's covert sale of PROMIS to foreign governments.

Mr. Coleman stated under oath that he had been contacted by a reporter named Danny Casolaro on August 3, 1991. Mr. Coleman stated that Mr. Casolaro told him that he had leads and hard information about (1) Department of Justice groups operating overseas, (2) the sale of the "PROMIS(E)" software by the U. S. Government to foreign governments, (3) Bank of Credit and Commerce International (BCCI), and (4) the Iran/Contra scandal.¹⁹⁹

Juval Aviv. Mr. Juval Aviv stated to the committee that he is a former member of the Israeli Mossad who currently serves as president and chief executive officer of Interfor, Inc., a private investigative firm specializing in international investigations. In January 1991, Mr. Aviv told committee investigators that he could provide information that Dr. Brian sold INSLAW's Enhanced PROMIS software to U.S. Government agencies outside the Department, including the CIA, National Security Agency, National Aeronautics and Space Administration, and the National Security Council. Mr. Aviv also stated that Dr. Brian sold the PROMIS software to Interpol in France, the Israeli Mossad, the Israeli Air Force, and the Egyptian Government.²⁰⁰

Mr. Aviv stated that Dr. Brian sold the software to Egypt through the use of the foreign military assistance program and that the software was called either Data Plus or PROMIS Plus. He also stated that INSLAW's Enhanced PROMIS software was converted for use by both the United States and British Navy nuclear submarine intelligence data base.

Mr. Aviv stated that there are witnesses and documents to corroborate his allegations. Following Mr. Aviv's meeting with committee investigators in January 1991, he has refused to provide a sworn statement or any further information.

¹⁹⁹ Sworn affidavit of Lester K. Coleman, INSLAW, Inc. v. United States et al., Adversary Proceeding No. 86-0069.

²⁰⁰ Mr. Aviv met with investigators on January 25, 1991, at Interfor, Inc., offices in New York City. See memorandum of interview on file with the committee.

John Schoolmeester: The committee received information from Mr. and Mrs. Hamilton that John Schoolmeester, a former Customs Services program officer, had direct knowledge of ties between Mr. Videnieks and one of Dr. Brian's computer companies called Hadron, Inc., prior to Mr. Videnieks' employment with the Justice Department.²⁰¹ Mr. Hamilton asserted that Mr. Videnieks conspired with Dr. Brian and other Hadron, Inc., management to transfer INSLAW's PROMIS software to the company. In two sworn statements provided to the committee, Mr. Schoolmeester stated that Mr. Videnieks, as a contracting officer for the Customs Service, was involved with several Hadron, Inc., contracts, and that Mr. Videnieks would necessarily have met with Dominic Laiti (a former Hadron, Inc., chief executive officer) on a regular basis because that was the way Mr. Laiti conducted business. However, Mr. Videnieks stated under oath that he did not know or have any conversations with Dominic Laiti or Dr. Brian.²⁰² Mr. Schoolmeester stated that Dr. Brian was "the behind the scenes guy at Hadron, Inc.," but he was not certain whether Mr. Videnieks had met with him.²⁰³ Mr. Schoolmeester also stated that Dr. Brian was well connected in Washington and that he had connections with Mr. Meese and several congressional figures.²⁰⁴

Lois Battistoni: The committee also received allegations from Mr. Hamilton that Ms. Lois Battistoni, a former Justice Criminal Division employee, had information which could support the allegation that Dr. Brian had arranged with Justice officials to transfer PROMIS to Hadron, Inc. According to Mr. Hamilton, Ms. Battistoni stated that a Criminal Division employee had told her that there was a company chosen to take over INSLAW's contracts and that this company was connected to a top Department official through a California relationship. Mr. Hamilton stated that she believed that Hadron, Inc., was a possibility because Dr. Brian and Mr. Meese served together in Governor Reagan's administration.²⁰⁵

Ms. Battistoni, however, stated under oath to committee investigators that she has little firsthand knowledge of the facts surrounding these allegations, nor did she provide the name of the Criminal Division employee who had provided her with the information about this matter. She indicated that Department employees are afraid to cooperate with Congress for fear of reprisals by the Justice Department.²⁰⁶

Ms. Battistoni also raised a number of allegations about the involvement of Department employees in the destruction (shredding) of documents related to the INSLAW matter.²⁰⁷ While the committee was unable to obtain any direct information about the alleged

²⁰¹ December 22, 1989, affidavit of William Hamilton in *INSLAW, Inc. v. Dick Thornburgh*, 41 F.3d 12.

²⁰² Sworn statement of Peter Videnieks, November 5, 1990, p. 104 (on file with the committee).

²⁰³ Sworn statement of John Schoolmeester, October 10, 1991, pp. 5-6 (on file with the committee).

²⁰⁴ Sworn statement of John Schoolmeester, November 5, 1991, p. 17 (on file with the committee).

²⁰⁵ December 22, 1989, affidavit of William Hamilton, *INSLAW, Inc. v. Dick Thornburgh*, 41 F.3d 12.

²⁰⁶ Sworn statement of Lois Battistoni, October 2, 1991, p. 54. See also numerous memoranda of interviews on file with the committee.

²⁰⁷ Memorandum of interview, February 14, 1992 (on file with the committee).

shredding provided by Ms. Battistoni, calls for further investigation.

C. OTHER IMPORTANT QUESTIONS

1. THE DEATH OF DANIEL CASOLARO

On August 10, 1991, the lifeless body of Mr. investigative reporter investigating the INSLAW discovered in a hotel room in Martinsburg, West Virginia. The body was found in the bathtub with both of his arms and legs protruding several times. There was no sign of forced entry into the room nor of a struggle. A short suicide note was found. A preliminary investigation by the local authorities, the death was ruled a suicide.²⁰⁸ The investigation was reopened following numerous inquiries by Mr. Casolaro's brother and others into the suspicious circumstances surrounding his death. On January 25, 1992, after expending over 1,000 man-hours investigating his death, the local authorities again ruled Mr. Casolaro's death a suicide.

The committee did not include the death of Daniel Casolaro as part of its formal investigation of the INSLAW matter. Nevertheless, it is a fair statement to observe that the controversy surrounding the death continues to be discussed in the press and to other figures connected to the INSLAW litigation. These questions appear to be fostered by the suspicious circumstances surrounding his death and the criticism of in the Martinsburg Police Department's investigation.²¹⁰

Other sources have been quoted in the media indicating that Mr. Casolaro did not commit suicide, and that his death was linked to his investigation of INSLAW, Bank of Credit and Commerce International (BCCI), and other matters such as the Iran/Contra af-

²⁰⁸ Daniel Casolaro had indicated to a number of individuals that the INSLAW affair was part of a much deeper tangle of intrigues that he called the Octopus. They included the Iran-Contra arms deals and BCCI.

²⁰⁹ Telephone interview of Sergeant Swartwood, Martinsburg, West Virginia Police, August 12, 1991. Sergeant Swartwood told committee investigators that Mr. Casolaro's death had been handled as a suicide and that the scene had not been protected.

²¹⁰ Elliot Richardson, a former Attorney General, now representing INSLAW, called for a Federal investigation of Mr. Casolaro's death: "I believe he was murdered, but even if that is no more than a possibility, it is a possibility with such sinister implications as to demand a serious effort to discover the truth." (October 21, 1991, New York Times.)

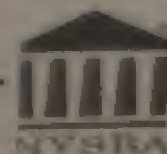
In a memorandum to Department of Justice Special Counsel Judge Nicholas Bua, Mr. Richardson urges that further investigation of Mr. Casolaro's death is needed. Mr. Richardson stated that:

"During the 3 days preceding his [Mr. Casolaro] death he told four friends in the course of four different telephone conversations that he was about to go to West Virginia to meet someone from whom he was confident of receiving definitive proof of what had happened to the PROMIS software and to INSLAW. There is no apparent reason why Casolaro would have lied to those four friends, nor is there any apparent reason why his friends would deliberately and concertedly misrepresent what he said to him. It is not likely, on the other hand, that Casolaro had unrealistic expectations either toward the significance of the evidence he anticipated receiving or toward the prospect that it would be delivered. He had, after all, been on the INSLAW case for 1 year, and he was bound to know as well as any other of the investigative reporters then pursuing it that promises of hard evidence had often been made and just as often disappointed."

In the light of these facts, the key question is, with whom was Danny Casolaro expecting to meet and with whom did he meet? In our view the answer to that question should be relentlessly pursued.

[Elliot Richardson memorandum to Judge Bua, January 14, 1992, pp. 43-44 (on file with committee).]

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shredding provided by Ms. Battistoni, the issue stands open and calls for further investigation.

C. OTHER IMPORTANT QUESTIONS REMAIN

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In the light of these facts, the key question is, with whom was Danny Casolaro expecting to meet and with whom did he meet? In our view the answer to that question should be relentlessly pursued.

(Elliot Richardson memorandum to Judge Buz, January 14, 1992, pp. 43-44 (on file with committee).)

fair.²¹¹ It has been reported that Mr. Casolaro had confided to several people that he was receiving death threats because he was getting close to concluding his investigation. Furthermore, he told family and friends not to believe that, if he died, it was by accident. According to his brother, Mr. Casolaro's investigation began to come together during the summer of 1991. Several people indicated he was upbeat and that on the weekend of August 10, 1991, he was in Martinsburg, WV to receive significant information for his project from a source.²¹²

Mr. Casolaro died on August 10, 1991, and his death was officially ruled a suicide on January 25, 1992, over 5 months later. The criticism of the investigation of Casolaro's death by the Martinsburg, WV, police center on the following areas: Prior to any coroners' investigation and before his family was notified, Mr. Casolaro's body was embalmed, which may have limited the effectiveness of autopsies or toxicological examinations. Some evidence has also surfaced indicating that immediately following the discovery of the body, the room was not sealed by the Martinsburg authorities, potentially allowing for the contamination of the possible crime scene. Additionally, it was reported that the room in which Mr. Casolaro was found was cleaned before a thorough criminal investigation could be conducted.

Information received from other sources reveal other curious circumstances surrounding Mr. Casolaro's death that may or may not have been considered by Martinsburg authorities. In a sworn statement to the committee, Richard Stavin (a former Department of Justice Organized Crime Strike Force prosecutor) stated:

I received a call from Danny Casolaro approximately 1 week before he was found dead.... He spoke to me about INSLAW. He spoke to me about a group he called, the Octopus. I believe he mentioned Robert Nichols, and possibly also John Phillip Nichols, in this conversation, and was extremely interested, intrigued and frustrated in his inability to get a grasp on what he called the Octopus.

he had indicated that he had met with—again I believe it was Robert Nichols on several occasions, that Robert Nichols was extremely talkative to a point, but when Mr. Casolaro would ask specific questions, he [Nichols] would become somewhat evasive. 213

William Hamilton and Michael Riconosciuto both told committee investigators that Robert Booth Nichols was Danny Casolaro's primary source of information in his investigation into the theft of the

²¹¹ Washington Post, January 27, 1992, p. B2.
212 Telephone interview of A-11.

The postmortem interview of Anthony Casolario, M.D., August 12, 1991. Dr. Casolario also told the committee investigators that on August 5, 1991, Danny Casolario said to him, "someone else told me I better back off the story." Dr. Casolario also said that Olga Melrose, Danny Casolario's housekeeper, received a phone call in which the caller said, "you're dead, you bastard." Dr. Casolario also told Dr. Casolario that following Danny Casolario's death, she noticed that a stack of typewritten pages that usually sat on top of Danny Casolario's desk was missing. Dr. Casolario told the Wallington Post (January 27, 1992, p. B2) that it was suspicious that none of Mr. Casolario's work papers, negative notes or papers were found in his car, hotel room, or at his home after his body was discovered. Mr. Casolario's brother thought that this was suspicious because all throughout his life, Mr. Casolario had been conducting his investigation, his research, and his notes on the Casolario case, his brother said.

the car and his room. If my brother did that, it seems as though he should have been found." Washington Post, January 27, 1992, p. B2.

11. Sworn statement of Richard Starin, March 13, 1992, pp. 23-24 (on file at committee).

PROMIS software system. In a later test, the tools told committee investigators that the board for Mr. Casolano and providing investigation into the INSLAW matter. Provide a swift stream of information.

In addition, the committee was informed by Mr. Riconosciuto's attorney, a FBI agent—that a current FBI field agent had information relating to Danny Casaretti the INSLAW matter. At the request of the committee, the FBI agent and the INSLAW agent agreed to allow Special Agent Galt to interview the FBI agent. Although Special Agent Galt had received several calls from Mr. Casaretti in the weeks before his death, the

Special Agent Gates stated that he believed Mr. Casolaro's death for several reasons. In his conversations with Casolaro, after his death, Gates had felt that Casolaro was not like a person contemplating suicide. Mr. Casolaro had

Mr. Caserio had a phone book with Agent Gates' telephone number. Special phone book had not been located.

The Martinsburg Police Department told Mr. Casolaro's arms were "hacking" wounds, consistent with injuries inflicted by an iron pipe on one's own wrists. Special Agent Gates said the Police investigators had

...he [Mr. Casolaro] hacked his way out, but they were cut almost in a slation...

An open bottle of wine was allegedly found, but its contents had not been tested at the time of the conversation with Marlinsburg authorities.

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...based upon my prior testimony in
tacts with Casolare and also with the
tinsburg Police Department, there is
to be raised. 217

314 Memorandum of interview with Robert Booth Nichols, Jr. (committee)

218 Sworn statement of Special Agent Thomas Faling, North Carolina.

210 Interstate Transportation to Aid of Necker Island (1990)
Thomson Gates, March 26, 1992, p. 60.

¹¹⁷ Ibid., p. 61. It should be noted that Dronkowski has expressed narrow strands of his conservatism with Christian

PROMIS software system. In a later telephone interview, Mr. Nichols told committee investigators that he was acting as a sounding board for Mr. Casolaro and providing direction and insight for his investigation into the INSLAW matter.²¹⁴ Mr. Nichols would not provide a sworn statement to committee investigators.

In addition, the committee was informed by three separate individuals—Mr. Riconosciuto's attorney, a private investigator and a FBI agent—that a current FBI field agent, Thomas Gates, likely had information relating to Danny Casolaro's efforts to investigate the INSLAW matter. At the request of the committee, Director Sessions agreed to allow Special Agent Gates to provide the committee a sworn statement. Though Special Agent Gates' statement covered a broad range of subject matter areas, some speculative and some reflecting first person accounts, he indicated under oath that he had received several calls from Mr. Casolaro, beginning approximately 4 weeks before his death.²¹⁵

Special Agent Gates stated that he was very suspicious about Mr. Casolaro's death for several reasons, including:

In his conversations with Casolaro, even days before the reporter's death, Gates had felt that Casolaro sounded very "upbeat" and not like a person contemplating suicide.

Mr. Casolaro had a phone book which contained his (Special Agent Gates') telephone number. Special Agent Gates said that the phone book had not been located during the police investigation.

The Martinsburg Police Department told him that the wounds to Mr. Casolaro's arms were "hacking" wounds. Special Agent Gates felt that the amount of injury to the arms of Mr. Casolaro were not consistent with injuries inflicted by an individual who had slit his own wrists. Special Agent Gates said he was told by Martinsburg Police investigators that:

...he [Mr. Casolaro] hacked his wrists... the wrists were cut, but they were cut almost in a slashing or hacking motion....

An open bottle of wine was allegedly found in the room, but the contents had not been tested at the time of Special Agent Gates' conversation with Martinsburg authorities.

Special Agent Gates said that he made his suspicions known to Martinsburg authorities, and that he called the local FBI office and suggested that they investigate because it was possibly related to criminal activity which falls within the jurisdiction of the FBI.²¹⁶ In his sworn statement, Special Agent Gates concluded that:

...based upon my prior testimony concerning my contacts with Casolaro and also with the Captain of the Martinsburg Police Department, there is cause for suspicions to be raised....²¹⁷

²¹⁴ Memorandum of interview with Robert Booth Nichols, January 21, 1992 (on file with the committee).

²¹⁵ Sworn statement of Special Agent Thomas Gates, March 25, 1992, p. 10 (on file with the committee).

²¹⁶ Interoffice Memorandum of Transportation in Aid of Racketeering (ITAIR), Sworn statement of Special Agent Thomas Gates, March 26, 1992, p. 56.

²¹⁷ Ibid., p. 61. It should be noted that throughout his deposition, Agent Gates repeatedly connected various strands of his conversations with Casolaro, as well as other aspects of the

V. ALLEGATIONS OF PERJURY, COVERUP, AND RETRIBUTION: A WEB OF CONTRADICTION AND DECEIT

The committee encountered numerous situations that pointed to a concerted effort by Department officials to manipulate the litigation of the INSLAW bankruptcy, as alleged by the president of INSLAW. For example, there were several possibly perjurious conflicts and contradictions among witnesses of the alleged Department attempt to convert INSLAW from a chapter 11 reorganization to a chapter 7 liquidation.²²³ During this controversy, one key Department witness was harassed and, ultimately, fired because the Department decided, based on its own information, that the findings of the Bankruptcy Court were erroneous and the witness' information sharing to INSLAW was a dismissible offense.

On March 17, 1987, William Hamilton and his wife Nancy met with Anthony Pasciuto, then-Deputy Director of the Justice Department's Executive Office for U.S. Trustees (EOUST). Mr. Pasciuto provided them information obtained during a January 12, 1987, conversation with Judge Cornelius Blackshear, the U.S. Bankruptcy Court judge for the Southern District of New York.²²⁴ This conversation led to an allegation that Thomas Stanton, the EOUST Director, sought to have INSLAW's bankruptcy status converted from a chapter 11 reorganization to a chapter 7 liquidation of the company's assets, allegedly through the help of Harry Jones,²²⁵ the Assistant U.S. Trustee for the Southern District of New York and an expert in chapter 11 bankruptcy law.²²⁶ According to Mr. Pasciuto, Judge Blackshear stated that Mr. Stanton had pressured Judge Blackshear to have Mr. Jones sent to Washington to take over the INSLAW case, and that Judge Blackshear didn't like it. During sworn testimony to committee investigators on June 4, 1991, Mr. Pasciuto stated that he attended a January 1987 luncheon meeting with Judge Blackshear, Judge Lawrence Pierce (a U.S. Circuit Court judge and a long time associate of Pasciuto), Mr. Pasciuto, Mr. Jones and Mr. Elliott Lombard (an acquaintance of Pasciuto's). Mr. Pasciuto stated that Judge Blackshear described Mr. Stanton's attempt to pressure him into sending Mr. Jones to work on the INSLAW bankruptcy, and that it was clear in his mind that Judge Blackshear implied that Mr. Stanton wanted INSLAW converted to chapter 7 status and needed Mr. Jones to accomplish this.²²⁷

Cabazon Indian Reservation and Wackenhut, Inc. The continuing interconnection of the names of Michael Riconosciuto, Dr. Earl Brian, Robert Booth Nichols and the Cabazon Indian Reservation are certainly intriguing and curious "associations" but without the requisite degree of causation and factual convergence necessary to draw conclusions at this time into potential wrongdoing in the INSLAW matter.

²²³This allegation is key to INSLAW's claim that the Department attempted to put the company out of business and transfer its principal asset Enhanced PROMIS to Hadron, Inc., a company controlled by Dr. Earl Brian, former Attorney General Meese's friend and associate.

²²⁴Judge Blackshear was appointed to the bench in November 1985. Prior to this time he was the U.S. Trustee for the Southern District of New York.

²²⁵Mr. Jones, who has professed ignorance of a possible role in any attempt to convert the company to chapter 7 status, is now a bankruptcy judge.

²²⁶Sworn statement of Anthony Pasciuto before the House Committee on the Judiciary, June 4, 1991, pp. 18-20, 26-29, 47. Also, Proffer of Anthony Pasciuto provided to the Senate Permanent Subcommittee on Investigations, July 16, 1989, pp. 1-2.

²²⁷In a sworn statement with committee investigators on April 24, 1991, Mr. Stanton denied that he wanted INSLAW converted, but stated that he called Judge Blackshear to request Mr. Jones about handling the INSLAW bankruptcy because of his experience in bankruptcy cases.

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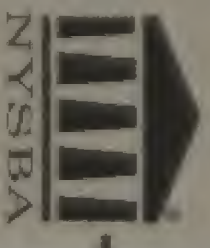
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Judge Jane Solomon, a New York City judge, told committee investigators that on March 18, 1987, Judge Blackshear provided her an identical story on the key points of INSLAW's conversion and the Jones transfer to Washington. According to Judge Solomon, Judge Blackshear stated that he had been asked by Mr. Stanton, to assign Mr. Jones to the INSLAW case, and he refused without an Attorney General directive. Judge Blackshear also told Judge Solomon that Mr. William White, the U.S. Trustee for the Washington, DC, area, told him that Mr. Stanton pressured Mr. White to move in court to convert the INSLAW bankruptcy from chapter 11 to chapter 7 and steal the PROMIS software.²²⁸ While she was willing to provide a limited and hostile interview to committee investigators, Judge Solomon refused to provide a sworn statement to the committee about Judge Blackshear's discussion with her on the INSLAW matter.

On March 23, 1987, Mr. William White provided his first deposition to INSLAW counsel. Mr. White stated that he received an inquiry from Stanton about the INSLAW case, and he reported back to EOUST on the case's status. Mr. White denied that he was ever directed to take any action regarding INSLAW by the EOUST or anyone else, including filing to convert. Mr. White did state that Judge Blackshear told him that Judge Blackshear's assistant, Harry Jones, was going to be detailed to Washington.²²⁹ Mr. White was involved with the INSLAW case when the company filed a confidentiality motion with the Bankruptcy Court to protect certain proprietary information from public disclosure. INSLAW filed this motion because of allegations that confidential information was being provided to the Department by the EOUST. Mr. White stated that INSLAW's confidentiality motion raised the perception that his office was not independent and, because of this concern, White inserted language in the order that restricted Justice Department access to confidential INSLAW information to his immediate staff. Mr. White also believed this would preclude Mr. Harry Jones from having access to INSLAW materials if he were detailed to Washington.

On March 25, 1987, Judge Blackshear stated, under oath, to INSLAW counsel that Mr. White told him that Mr. Stanton pressured Mr. White to move in court to convert the INSLAW bankruptcy from chapter 11 to chapter 7. Judge Blackshear also stated that Mr. Stanton planned to have Harry Jones loaned to Washington to manage the INSLAW case and to arrange for INSLAW's conversion.²³⁰ As previously indicated, Judge Blackshear spoke with

Mr. Stanton stated that, in his view, Judge White and his support staff were relatively inexperienced in bankruptcy matters and Mr. Stanton:

"... was afraid that our staff there was not up to a complex situation if a complex situation developed."

Mr. Stanton stated that Judge Blackshear informed him that he could not spare Mr. Jones from his New York duties, and Mr. Stanton stated the issue went no further. Senate Staff study, dated September 1989, by the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, on Allegations Pertaining to the Department of Justice's Handling of a Contract with INSLAW, Inc., p. 20.

Sworn statement of William C. White, Jr. in re INSLAW, Inc., Bankruptcy case No. 86-00070, March 23, 1987, pp. 18, 20-23.

Sworn statement of the Honorable Cornelius Blackshear, Jr. in re INSLAW, Inc., Bankruptcy Case No. 86-00070, March 25, 1987, pp. 8-11. Mr. Stanton provided a sworn statement to INSLAW counsel and stated that he had asked Judge Cornelius Blackshear to detail his then first Assistant, Harry Jones to Washington to take over the management of the INSLAW case. Mr. Stanton further stated, however, that he never presented, directed, or suggested to Mr.

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B. JUDGE BLACKS

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White or anyone else that INSLAW, Inc., Bankruptcy Case No. 86-00070, March 25, 1987, pp. 8-11. Mr. Stanton provided a sworn statement to INSLAW counsel and stated that he had asked Judge Cornelius Blackshear to detail his then first Assistant, Harry Jones to Washington to take over the management of the INSLAW case. Mr. Stanton further stated, however, that he never presented, directed, or suggested to Mr.

Judge Solomon on March 18, providing her an identical story on the key points of INSLAW's conversion and the Jones transfer to Washington.

A. JUDGE BLACKSHEAR'S RECANTATION

Judge Blackshear stated that he called Mr. White immediately after he gave his deposition to INSLAW's attorneys to discuss his statement. At that point, according to Judge Blackshear, Mr. White told Judge Blackshear that he was mistaken because they never discussed converting INSLAW.²³¹ The next morning, Judge Blackshear's attorney—James Garrity, an assistant U.S. attorney—received a call from Dean Cooper, a trial attorney in the Department's Civil Division. According to Mr. Garrity, Mr. Cooper told him that Judge Blackshear's statement was wrong, and the Department wanted something undertaken (such as a letter) to correct the error. Mr. Garrity spoke with Judge Blackshear by telephone, and Judge Blackshear took the advice of his attorney and decided to correct his alleged errors.²³² It is highly questionable how the Department could ethically represent both itself and Judge Blackshear in the INSLAW litigation. In effect, the Department was a defendant in the case while one of its attorneys (Mr. Garrity) at the same time was representing a key witness (Judge Blackshear) for the plaintiff (INSLAW).

On March 26, 1987, Judge Blackshear submitted an affidavit to the court correcting his previous statement. In this affidavit Judge Blackshear stated that Mr. White never told him that Mr. Stanton was pressuring him to convert INSLAW to a chapter 7 bankruptcy, and that he had confused such an effort with Internal Revenue Service (IRS) pressure on Mr. White to convert United Press International (UPI) to a chapter 7.²³³

B. JUDGE BLACKSHEAR'S STATEMENT TO COMMITTEE LACKS CREDIBILITY

Judge Blackshear provided a sworn statement to committee investigators on January 25, 1991. In contrast to Mr. Stanton's assertion that he contacted Judge Blackshear directly about Mr. Jones,

²³¹ While or anyone else that INSLAW be converted. Sworn statement of Thomas J. Stanton, *In re: INSLAW, Inc.*, Bankruptcy Case No. 85-00070, pp. 26-33.

²³² Record of FBI interview of Cornelius Blackshear, November 10, 1988, p. 3.

²³³ Record of FBI interview of James Garrity, assistant U.S. attorney, dated October 26, 1988, p. 2.

²³⁴ In an interview with committee investigators on March 27, 1992, Judge Martin S. Teel, Judge Bason's replacement, said that, prior to his appointment as bankruptcy judge in February 1988, he was the Assistant Chief of the Department's Tax Division. At that time, he supervised the tax portion of both the UPI and INSLAW matter for the Department. Judge Teel refused to provide a sworn statement about his activities with the Tax Division.

Judge Teel said the decision to ask the court to convert INSLAW's bankruptcy status from chapter 11 to chapter 7 in 1987 originated with the IRS—not the Department—and had nothing to do with the Department's conflict over the INSLAW contract. Judge Teel said that, by statute, the Department of Justice is responsible for representing the IRS in tax cases. Judge Teel said that the Department of Justice cannot initiate tax litigation but can only act in response to requests from its client (IRS). Judge Teel said, however, that on occasion, there can be a "backwards flow" in which the Department suggests to the IRS to request filing a conversion but added that this (INSLAW) wasn't one of those times. When asked if there was a conflict of interest when one part of the Department was being sued, and another part of the Department was suing the same business, Judge Teel responded, that it was the policy of the Tax Division to administer tax laws equally. Judge Teel said that no one is insulated from the U.S. Tax Laws and that if INSLAW believed that they were insulated from tax laws they were mistaken. Judge Teel refused to provide a sworn statement on this matter.

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Judge Blackshear stated that the information he provided in his prior depositions was not based on personal knowledge but on hearsay information provided by other sources.²³⁴ Judge Blackshear attributed much of this information to Mr. Pasciuto, and he stated that he first became aware of the INSLAW case when Mr. Pasciuto told him that Mr. Stanton was attempting to have Mr. Jones assigned to the case.²³⁵

Judge Blackshear stated that he informed Judge Solomon that he had heard that the Department was attempting to get INSLAW converted and that he gave her most of the information he provided during his March 25, 1987, deposition. He also confirmed that he gave similar information to INSLAW attorneys on separate occasions prior to his March 25 deposition.²³⁶ Judge Blackshear stated that he obtained his ideas about INSLAW from Mr. Pasciuto and the story changed because:

At the time I was telling the story before the recantation, in my mind, that's the way it had occurred. My mind changed after having talked to Bill White. But my statement [the recantation] did not change the facts of the matter, but just basically changed as to the fact that Bill White did not tell me that. Now I remember that it was Tony Pasciuto that told me those things.²³⁷

Judge Blackshear stated that he never discussed the INSLAW conversion issue with Mr. White. Judge Blackshear stated, however, that Mr. White discussed with Judge Blackshear how Mr. Stanton attempted to interfere in U.S. Trustee operations managed by Mr. White and several other U.S. Trustees. Judge Blackshear also stated that he had heard that Mr. Stanton had reduced funding for certain U.S. Trustees, but he could not specifically identify the situations or trustees involved.²³⁸

Judge Blackshear could not explain to committee staff why Mr. White contends that he did not discuss the UPI bankruptcy case with him. Judge Blackshear could not recall who brought up the UPI issue when he contacted Mr. White after the March 25 deposition. He was also confused as to the general timeframe when Mr. White supposedly described the UPI bankruptcy case to him. Judge Blackshear said, however, he was certain that he used UPI as an

²³⁴ In a sworn statement provided to committee investigators on April 24, 1991, Mr. Stanton contradicted Judge Blackshear's description of events. Mr. Stanton stated that he called Judge Blackshear to request Harry Jones handling the INSLAW bankruptcy because of his experience in bankruptcy cases. Mr. Stanton stated that, in his view, Mr. White and his support staff were relatively inexperienced in bankruptcy matters and Mr. Stanton:

"... was afraid that our staff there was not up to a complex situation if a complex situation developed."

Mr. Stanton stated that Judge Blackshear informed him that he could not spare Mr. Jones from his New York duties, and Mr. Stanton stated the issue went no further. Mr. Stanton stated that he spoke with Mr. White once about the INSLAW bankruptcy and this involved a request for INSLAW's bankruptcy petitions and schedules. Mr. Stanton stated that he had no conversation with Mr. White or Mr. Brewer regarding conversion of INSLAW from chapter 11 to chapter 7.

Mr. Stanton stated that he could not explain the discrepancy between his recollection about the Jones detail and what Judge Blackshear indicated in his sworn statements. Mr. Stanton maintained that he specifically talked to Judge Blackshear about assigning Mr. Jones to work on the case.

²³⁵ Sworn statement of Judge Carmine Blackshear, January 25, 1991, pp. 2, 59-60, 68-70, 88-89.

²³⁶ Ibid., pp. 60-61.

²³⁷ Ibid., p. 157.

²³⁸ Ibid., pp. 73-76.

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C. COMMITTEE ANALYSIS

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²³⁹ Ibid., pp. 108-120.

²⁴⁰ PSI staff found Blackshear's recollection of events to be inconsistent with the four separate occasions that was confirmed by a breakfast meeting. Furthermore, the sworn statements that he confirmed INSLAW conversion of Carmine Blackshear, January 25, 1991, pp. 78-79.

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example at the ABA (American Bar Association) conference and on several other occasions (although he could not specifically recall these other occasions).²³⁹ Judge Blackshear, in discussing the PSI findings²⁴⁰ regarding Judge Blackshear's "implausible" statements, told committee investigators:

... my statement concerning INSLAW was probably consistent with Tony's [Pasciuto] because Tony advised me as to what was going on with INSLAW. As far as the statement concerning the UPI case, all I can say is that I was told that by Bill White. It may have come up at the ABA meeting, and it may have been informal as opposed to [being] formally on the record.²⁴¹

Judge Blackshear stated under oath to committee investigators that Mr. White became extremely upset when Judge Blackshear described what he had said about converting INSLAW. Mr. White responded that they never had a conversation about an INSLAW conversion and told Judge Blackshear that his (White's) deposition indicated that Mr. Stanton never pressured him to convert INSLAW. Mr. White then asked Judge Blackshear to remember when they discussed INSLAW, and Judge Blackshear could not pinpoint such a conversation. It was at this point that Judge Blackshear says he recalled some discussions with Mr. White about the UPI case and, with Mr. White's prompting, decided that he had confused INSLAW with UPI.²⁴²

Judge Blackshear also indicated to committee investigators that the opposing statements raised difficult questions in his mind about whether his story would be perceived as more credible than Mr. White's in court. The judge stated:

... I knew that if we had to go to court, and he [Mr. White] was saying that Tom Stanton did not pressure him, and I was saying that he told me that he did, that it would become a credibility question. They would probably give my story more credibility than his. I did not wish to put it at a place where they would be judging our credibility and taking mine over his.²⁴³

C. COMMITTEE ANALYSIS OF ATTEMPT TO ASSIGN HARRY JONES TO THE INSLAW CASE

Numerous witnesses involved in the Jones reassignment issue provided conflicting sworn statements; however, Judge Blackshear is clearly at odds with everyone on this allegation. Judge Blackshear maintains that (1) Mr. White had contacted him to advise that Mr. Stanton was going to ask that Mr. Jones be sent to Washington, (2) he spoke only with Mr. White and Mr. Jones and (3) he never talked to Mr. Stanton about the Jones issue. Judge

²³⁹ Ibid., pp. 109-120.

²⁴⁰ PSI staff found Blackshear's recantation to be "implausible" and inconsistent with their investigative findings. For example, the staff determined that Blackshear provided information on four separate occasions that was consistent with the story Pasciuto told the Hamiltons at their breakfast meeting; furthermore, facts the staff uncovered did not support Blackshear's recantation statements that he confused INSLAW with UPI.

²⁴¹ Sworn statement of Cornelius Blackshear, op cit., p. 156.

²⁴² Ibid., pp. 106-109.

²⁴³ Ibid., pp. 78-79.

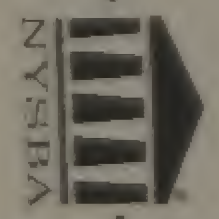
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Blackshear stated that he told Mr. Jones that if he were contacted regarding an assignment to the Washington office for handling INSLAW, he was to decline and refer the matter to Judge Blackshear.

In contrast to Judge Blackshear's statements, Mr. Stanton stated under oath that he called Judge Blackshear regarding the Jones detail, and he is sure that he told Judge Blackshear why he wanted Mr. Jones assigned. Also, Mr. White stated that Judge Blackshear called him about Mr. Stanton's request, and he had no knowledge of this request before his discussion with Judge Blackshear. Mr. White stated that Judge Blackshear told him that the call had been made by Mr. Stanton directly to Mr. Jones, which would fit Judge Blackshear's pattern of denying any firsthand knowledge of INSLAW matters.

In contrast to Judge Blackshear's and Mr. White's statements, Mr. Jones claims in his sworn statements that he could not recall any discussions regarding his possible assignment to the INSLAW case. Mr. Jones denies having been contacted by either Mr. Stanton, Judge Blackshear or Mr. White regarding an assignment to the INSLAW case, or being aware that such a request had been made. Judge Solomon also provided a recollection that indicates that Judge Blackshear was contacted by Mr. Stanton to request Mr. Jones. However, as mentioned earlier, she has refused to provide a statement under oath.

D. BASON ALLEGATIONS AGAINST BLACKSHEAR NOT ADEQUATELY CONSIDERED

Bankruptcy Judge Bason ruled that he believed INSLAW's witnesses had told the truth, while the Department's witnesses had not. The judge thought that the witnesses' stories ranged from intentionally lying to failure of recollection. According to Judge Bason, Judge Blackshear in particular had conducted himself in a way that called for strong action. On January 2, 1991, Judge Bason filed a complaint to the Judicial Council of the Second Circuit U.S. Court of Appeals against Judge Blackshear. In the statement of facts accompanying the complaint, the judge stated that:²⁴⁴

I have now regretfully concluded that Judge Blackshear recanted not because of an honest mistake but because he made a conscious choice to testify falsely....

Nor can I now escape the conclusion that Judge Blackshear attempted by his deliberately false testimony to prejudice and obstruct the administration of justice in the INSLAW bankruptcy-court proceeding.²⁴⁵

Judge Bason added in his complaint that:

As the presiding trial judge in INSLAW I was outraged at Department of Justice employees' attempts to obstruct justice by deliberately giving false testimony. That this

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²⁴⁴ On October 24, 1991, at the request of the committee, Judge Bason provided a copy of his complaint.
²⁴⁵ Judicial Council of the Second Circuit, Complaint Against Judicial Officer Under 28 U.S.C. 372 (c), filed by George F. Bason, Jr., former U.S. bankruptcy judge for the District of Columbia, Statement of Facts, pp. 1-2.

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charge can now legitimately be made against a sitting judge is even more disturbing.²⁴⁶

Unfortunately, there was no meaningful investigation of Bason's allegations. The Judicial Council of the Second Circuit appointed a special committee consisting of several judges to consider Judge Bason's allegation and provide a comprehensive written report. However, both groups refused to address Judge Bason's complaint because Judge Blackshear's alleged perjury dealt with matters outside of his judicial activities. On that basis Judge Bason's complaint was dismissed in its entirety on October 3, 1991.

Mr. Pasciuto's Firing. Mr. Anthony Pasciuto was the Deputy Director for Administration in the Justice Department's Executive Office for U.S. Trustees. As discussed previously, prior to the bankruptcy trial, Mr. Pasciuto told the Hamiltons at a March 17, 1987, breakfast meeting that Judge Blackshear had told him that Mr. Stanton had pressured Mr. White to convert INSLAW to chapter 7 liquidation, and had retaliated against Mr. White for refusing to do so. However, under strong pressure from senior Department officials, Mr. Pasciuto recanted his statement at the trial to say that neither Mr. White, Judge Blackshear nor anyone else from the Department had told him that Mr. Stanton had pressured Mr. White to convert the case to a chapter 7.²⁴⁷

In a March 17, 1988, letter, Mr. Pasciuto's attorney asserted that what Mr. Pasciuto had told the Hamiltons was true. The attorney stated that Mr. Pasciuto had backed away from his original statements at the trial because Judge Blackshear and Mr. White would not acknowledge the truth and because Mr. Stanton was putting pressure on Mr. Pasciuto to cooperate if he wanted to receive his appointment as an Assistant U.S. Trustee.

Mr. Pasciuto's sworn statement to committee investigators on June 4, 1991, was consistent with his previous statements to the Hamiltons. Mr. Pasciuto stated that at the January 1987 luncheon meeting, Judge Blackshear described Mr. Stanton's attempt to pressure him into sending Mr. Jones to work on the INSLAW bankruptcy, and that Judge Blackshear definitely implied that Mr. Stanton wanted INSLAW converted to chapter 7 status and needed Mr. Jones to accomplish this.²⁴⁸ Mr. Pasciuto also told committee investigators under oath that, prior to the January luncheon meeting, Mr. White told him Mr. Stanton was putting pressure on him regarding the INSLAW bankruptcy.

Mr. Pasciuto stated that he believed that the process to approve his Albany, NY, appointment was manipulated to influence his statement at the bankruptcy trial.²⁴⁹ He cited as support his ap-

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²⁴⁶ *Ibid.*, pp. 4-5.

²⁴⁷ Letter from Gary Howard Simpson, Pasciuto's attorney, to Mr. Arnold I. Burns, Deputy Attorney General, Department of Justice, March 17, 1988.

²⁴⁸ Sworn statement of Anthony Pasciuto, June 4, 1991, pp. 18-20, 26-29.

²⁴⁹ Mr. Stanton stated under oath that he recommended Mr. Pasciuto for the Assistant Trustee position in Albany, NY. The Deputy Attorney General, Arnold Burns, was required to sign as the approving official. Mr. Stanton, however, stated that, after Mr. Pasciuto provided his statement, the appointment paperwork was returned to Mr. Stanton, unsigned, from Mr. Burns' office with no explanation. Mr. Stanton claims he never received an explanation from Mr. Burns about why Mr. Pasciuto's appointment was not approved. However, he inferred that discrepancies between Mr. Pasciuto's depositions and his statement at the June 1987 bankruptcy trial

Continued

Mr. Pasciuto now regrets being coerced by the Department into recanting his original statements to the Hamiltons, and has stated under oath to committee investigators that he stands by his original statements made to the Hamiltons that Judge Blackshear had informed him that the Department wanted to force INSLAW out of business.

On January 20, 1988, Boykin Rose, the Associate Deputy Attorney General, sent a notice to Mr. Pasciuto proposing his removal from the Department. On March 17, 1988, Mr. Pasciuto's attorney wrote to the Department on Mr. Pasciuto's behalf, reaffirming Mr. Pasciuto's allegations to the Hamiltons about the Jones transfer and INSLAW conversion.²⁵² On March 23, 1988, Mr. Pasciuto's attorney also provided an oral reply to Mr. Pasciuto's proposed termination.²⁵³ After the brief oral hearing, the Department position remained unchanged, and Mr. Pasciuto, who was actively looking for alternative employment, agreed to leave the Department on April 1, 1988.²⁵⁴

Based on the interviews during our inquiry, and on our review of the Civil Division's June 18 memorandum addressing the June 12 ruling, we conclude that the bankruptcy court's remarks were unsubstantiated and unfair. Although the blame for this injudicious result appears to rest squarely on the court's shoulders, it is clear that the environment for his ruling was created largely because of

²⁶⁰ Sworn statement of Anthony Pasciuto, op. cit., pp. 4-69.

the Department's termination notice to Anthony Pasciuto.

and two officials from the Justice Management Division

...who would best be served by going to work elsewhere.

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OPR came much closer to Pasciuto's termination

In our view, but actions, the departure posture than i wholly failed to c standard of conduct. 268

The Department's cost of the INSLAW case, which is highly questionable, is highly questionable. The evidence indicating that the INSLAW case was a sham to force INSLAW into bankruptcy is evident given the conduct of Judge Blackshear and the Department. Unfortunately, the Department's conduct is an independent of Mr. Pasciuto's firing.

tice employees that the court rulings and arrival of witnesses' statements that the Department punished to those it previously overlooked incidentally made by witnesses that stated during the oral considerable expertise in

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206 Memorandum from the Deputy Attorney General regarding alleged

²⁶⁷ On February 26, 1998, INEL Section (PLS) alleging that Judge May 2, 1998, Acting Assistant Attorney General, requested that the FBI Division, requested that the FBI Judge Blackhour and Trovise Win. The FBI investigation involved the FBI decided to

The FBI, however, felt that it was self-relying on the statements of a man declared out to pursue Mr. Parnell's career.

Pasciuto's own totally irresponsible statements and actions.²⁶⁶

OPR came much closer to describing the real basis for Mr. Pasciuto's termination when it concluded that:

In our view, but for Mr. Pasciuto's highly irresponsible actions, the department would be in a much better litigation posture than it presently finds itself. Mr. Pasciuto has wholly failed to comport himself in accordance with the standard of conduct expected of an official of his position.²⁶⁶

The Department's conclusion that Mr. Pasciuto's statements on the INSLAW case, which he believed to be accurate, were "irresponsible" because it hurt the litigation posture of the Department is highly questionable.²⁶⁷ Mr. Pasciuto's statements held considerable credibility with the court. Further, there is significant evidence indicating that Mr. Pasciuto was telling the truth when he told the Hamiltons about a high level effort within the Department to force INSLAW into chapter 7 liquidation. This is particularly evident given the contradictory statements made under oath by Judge Blackshear and other key witnesses regarding this matter. Unfortunately, the Department decided to fire Mr. Pasciuto rather than conduct an independent investigation of the matter.

Mr. Pasciuto's firing undoubtedly sent a chilling message to Justice employees that the Department reserved the right to ignore court rulings and arrive at its own conclusions about the credibility of witnesses' statements. Further, it was apparent from this case that the Department planned to administer the harshest possible punishment to those it perceived were disloyal while it conveniently overlooked inconsistent and possibly perjurious statements made by witnesses that supported the Department's position. As stated during the oral hearing, Mr. Pasciuto's attorney, who had considerable expertise in personnel law, concluded that:

... I could certainly understand a reprimand for what he did specifically. That would be comprehensible [sic]; that would be in some way humanly understandable... I would understand that in a way that I would not understand a

²⁶⁶ Memorandum from the Department's Office of Professional Responsibility to the Deputy Attorney General regarding allegations of misconduct by Anthony Pasciuto, dated December 18, 1987, p. 8.

²⁶⁷ *Ibid.*, p. 9.

On February 26, 1988, INSLAW filed a complaint with the Department's Public Integrity Section (PIS), alleging that Judge Blackshear and Trustee White had committed perjury. On May 2, 1988, Acting Assistant Attorney General John C. Keeney, of the Department's Criminal Division, requested that the FBI open a criminal investigation into allegations of perjury by Judge Blackshear and Trustee White.

The FBI investigation included statements from Mr. White, Judge Blackshear, Mr. Stanton and Mr. Jones. The FBI decided to limit the scope of its investigation because supposedly there were no witnesses with firsthand knowledge to refute the sworn statements of these witnesses. The FBI concluded that the description of events by Judge Blackshear, Mr. White, and Mr. Stanton were consistent in every important respect, and that it could not use the information suggested by INSLAW to prosecute any persons for perjury.

The FBI, however, felt that it was possible that it could prove that Mr. Pasciuto perjured himself, relying on the statements of Mr. White, Mr. Stanton and Judge Blackshear. The Department decided not to pursue Mr. Pasciuto because:

... Pasciuto seems to have been punished adequately for his role in this case. He is not and endangered his career."

removal. I think the removal is punitive... I cannot understand somebody firing Mr. Pasciuto for this.²⁵⁸

Fundamentally, the Department held Mr. Pasciuto very accountable for his discussion with the Hamiltons—which was corroborated by other witnesses, including Judge Blackshear—while Judge Blackshear was excused for making identical statements to Judge Solomon and, under oath, to INSLAW attorneys. The Department concluded that no perjury charge could be brought against Judge Blackshear and Mr. White because it could not find evidence that their statements were false.²⁵⁹

VI. THE DEPARTMENT HAS PROVEN TO BE INCAPABLE OF A FORTHRIGHT INVESTIGATION OF THE INSLAW MATTER

Several requests were made to the Department to investigate the INSLAW matter. However, the Department focused its investigations on defending its supporters and either ignoring or attacking whistleblowers. Further, the Department's review of the need for an independent counsel investigation appears to have been deliberately shallow, which allowed the Department to conclude that it lacked sufficient evidence to warrant even a preliminary investigation of wrongdoing by the Department officials.

The Department also did little to resolve numerous conflicts and contradictions that arose during INSLAW's investigation of an alleged Department effort to liquidate INSLAW. A more thorough study would have revealed a troubling pattern of incomplete, contradictory, and possibly perjured testimony of key Government witnesses. A more indepth investigation of Department witness statements is clearly warranted to determine who lied and who told the truth. Also, in a show of extraordinary force, the Department fired an employee who merely relayed information to the Hamiltons from what should have been a highly credible source. This action no doubt had a chilling effect on other potential Department witnesses.

A. JENSEN FAILED TO ADEQUATELY INVESTIGATE INSLAW'S CONCERNS

On March 13, 1985, Elliot Richardson and Donald Santarelli, the former Administrator of LEAA, met with Acting Deputy Attorney General D. Lowell Jensen and requested that: (1) He authorize immediate, fair, and expedited negotiations between the Department and INSLAW to resolve the disputes that caused the withholding of moneys and INSLAW's bankruptcy, (2) the Department give immediate consideration to a new INSLAW proposal, and (3) he appoint someone to investigate INSLAW's repeated assertions that

²⁵⁸ Written proceedings of the Oral Reply to Proposed Removal Action in the Matter of Anthony Pasciuto, Deputy Director for Administration, DOJ, dated March 23, 1985.

²⁵⁹ "To be sure, the United States need not prove motive to make out a perjury case. The United States must, however, present a jury with a realistic fact situation in order to have any chance to convince a jury that the defendant lied. While INSLAW may have convinced Judge Beon that the truth was completely diametrical to the testimony, I believe it highly unlikely we could ever convince a rational jury of this beyond a reasonable doubt." (Memorandum from David Green, Trial Attorney, Public Integrity Section to Gerald McDowell, Chief, Public Integrity Section, June 14, 1989, p. 18.)

Department officials—particularly C. Madison Brewer—were biased against INSLAW.²⁶⁰

Judge Jensen stated in a June 1987 deposition that he appointed Jay Stephens, a Deputy Associate Attorney General, to conduct an investigation of the bias allegations, and he recalled discussing the results of Mr. Stephens' review. He added that, based on Mr. Stephens' investigation, he did not consider that an investigation by OPR was warranted. Judge Jensen stated that he wanted to be sure that the Department's actions were not driven by personal considerations or bias but were based on the merits of INSLAW's concerns. On the point of Mr. Brewer's alleged bias, Judge Jensen stated that:

I would think that the better path of wisdom is not to [hire an alleged fired employee to monitor the contract of his former employer] do that if that's possible to do... I think that it's better to have these kinds of issues undertaken by people who... don't have questions raised... whether they are not biased in favor of or against the people they deal with.²⁶¹

However, Judge Jensen concluded that, based on Mr. Stephens' investigation, he was satisfied that decisions were made on their merits and were justified, and Department officials did not intend any personal animosity.²⁶² It is also interesting, in light of Mr. Meese's denials that he was ever involved in the details of the INSLAW matter,²⁶³ that Judge Jensen stated that:

I have had conversations with the Attorney General [Meese] about the whole INSLAW matter... as to what had taken place in the PROMIS development and what had taken place with the contract and what decisions had been made by the department with reference to that.²⁶⁴

Mr. Stephens stated under oath that, in March 1985, Judge Jensen handed him an INSLAW proposal²⁶⁵ and asked him to check out INSLAW's proposal for new business and determine if there was anything the Department could do with it. Mr. Stephens stated under oath in direct contradiction of Judge Jensen's statement that he was never asked to investigate the bias issue.²⁶⁶

Mr. Stephens stated that, after Judge Jensen asked him to review the INSLAW new business proposal, he received several telephone calls from both Charles Work and Elliot Richardson, who are attorneys for INSLAW. He felt that they were lobbying the Department very hard because they believed that INSLAW had some special relationship with the Department. He added that they attempted to convey that based on a longstanding relationship be-

²⁶⁰ Deposition of Judge D. Lowell Jensen, June 19, 1987, pp. 23-25.

²⁶¹ Ibid., p. 34.

²⁶² Ibid.

²⁶³ Meese stated in his interview with this committee that he could not recall any discussions with Jensen about office automation or case tracking at the Department; he stated that if he did, it would have been casual conversation. Interview of Edwin Meese III, July 12, 1990, p. 23.

²⁶⁴ Deposition of Lowell Jensen, op. cit., pp. 35-36.

²⁶⁵ INSLAW submitted a proposal suggesting an approach for implementing PROMIS to the smaller U.S. attorneys' offices, since the Department terminated INSLAW's involvement in the word processing portion of the contract.

²⁶⁶ Sworn statement of Jay Stephens, July 12, 1991, pp. 14-17, 42.



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the Department violated the automatic stay when it claimed Enhanced PROMIS to be its property and installed it in at least 45 offices throughout the United States.²⁷⁹

Even Department management recognized that the Enhanced version of PROMIS was INSLAW's property. Mr. Burns stated in his OPR deposition that the Department's attorneys involved in the INSLAW case were (sometime in 1986):

...satisfied that INSLAW could sustain the [data rights] claim in court, that we had waived those rights...²⁸⁰

Committee investigators were informed that Michael Shaheen and Richard M. Rogers, Counsel and Deputy Counsel for OPR, respectively, recused themselves from the INSLAW investigation because of their association with Deputy Attorney General Burns, who was named in the allegations.²⁸¹ However, Mr. Rogers was present during a sworn statement provided by then-Attorney General Meese, which contradicts his claim that he had recused himself from the investigation.

C. GAO STUDY OF THE OFFICE OF PROFESSIONAL RESPONSIBILITY

The type of problems the committee found with OPR's investigation of the INSLAW matter were illustrated in a 1992 GAO study of the Office. GAO reviewed OPR's operations,²⁸² and several of its findings paralleled the one-dimensional nature of the OPR investigation of INSLAW. GAO found that:

OPR operated informally, did not routinely document key aspects of its investigations, and provided little background information in its case documentation.

OPR generally did not record the complete scope of and rationale behind the investigations or of the decisions reached in the course of the investigations.

OPR's conclusions that allegations were or were not substantiated were generally not explained.

In many instances, OPR did not pursue all available avenues of inquiry.

OPR counsel relied on the attorney's judgment and informal consulting among attorneys within OPR as the basis for making decisions and reaching conclusions about specific investigations.²⁸³

GAO concluded that OPR's informal approach to investigations, the limited scope of many of its investigations, and the minimal documentation contained in its files expose it and the Department to a range of risks, including:²⁸⁴

²⁷⁹ November 22, 1989, memorandum in appeal before Judge Bryant, U.S. District Court for the District of Columbia, p. 18.

²⁸⁰ March 30, 1990, interview of Deputy Attorney General Arnold Burns by OPR, p. 12.

²⁸¹ May 18, 1990, interview of Robert Lyons and David Bohlen, OPR.

²⁸² "Employee Misconduct: Justice Should Clearly Document Investigative Actions." Report to the chairman, Government Information, Justice, and Agriculture Subcommittee on Government Operations, House of Representatives, GAO/GO-92-31, dated February 7, 1992.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

If OPR's informality were to lead it to conclude an investigation prematurely, the integrity of the Department could be compromised.

If asked to defend an investigation against a charge that it was not aggressively pursued, OPR probably would not have sufficient documentation to defend its efforts. A review of the quality of an investigation based on the documentation would yield little information.

GAO recommended, among other matters, that OPR:

Establish basic standards for conducting its investigations, which could be obtained from other Department components.

Establish case documentation standards.

Follow up more consistently on the results of misconduct investigations done by other units and what disciplinary actions, if any, were taken as a result of all misconduct investigations.

The Department, INSLAW and others would have been better served had OPR conducted a full and complete investigation of the INSLAW bias allegations rather than the cursory review it conducted. Instead, OPR chose to attack the credibility of the Bankruptcy Court rather than investigate wrongdoing by high level Justice officials.

D. THE DEPARTMENT DID NOT SERIOUSLY CONSIDER THE NEED FOR AN INDEPENDENT COUNSEL

On December 5, 1990, in testimony before the Subcommittee on Economic and Commercial Law of the Committee on the Judiciary, former Attorney General Elliot Richardson, representing INSLAW, stated that he believed that "these attempts to acquire control of PROMIS were linked by a conspiracy among friends of Attorney General Edwin Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of all the Department's litigation divisions." As a result of this belief, Mr. Richardson advised his client, INSLAW, to contact the Department in an attempt to obtain a fair and complete investigation of the matter.

Mr. Richardson stated that INSLAW's attempts included (1) a referral to the Public Integrity Section of the Department's Criminal Division; (2) a referral to the Office of Independent Counsel McKay; (3) an appeal to the U.S. Court of Appeals to request an independent counsel; (4) letters to the Attorney General; and, as a last resort, (5) a petition for a writ of mandamus.

In February 1988, INSLAW submitted allegations raised from the Bankruptcy Court's January 1988 Findings of Facts and Conclusions of Law and other information developed by INSLAW to the Public Integrity Section. In its complaint, INSLAW charged the Department with (1) procurement fraud, (2) violation of the automatic stay invoked by the Bankruptcy Court and (3) Department attempts to change INSLAW's chapter 11 (reorganization) to a chapter 7 (liquidation).

Procurement Fraud: INSLAW alleged that the Department's acts criticized by Judge Bason were part of a larger "procurement



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"fraud" perpetrated by the Department.²⁸⁵ INSLAW alleged that Attorney General Meese and D. Lowell Jensen schemed to ensure that INSLAW's proprietary enhancements to PROMIS be obtained by the Department without payment and be made available to Dr. Earl Brian, a businessman and entrepreneur who owns and controls several businesses including Hadron, Inc., a software company which has contracts with the Justice Department and other agencies.

Violation of the Automatic Stay: INSLAW further alleged that the Department violated the automatic stay under Federal bankruptcy law by using INSLAW's proprietary enhancements to PROMIS after the bankruptcy case was filed. Judge Bason's opinion found that the Department violated the automatic stay under Federal bankruptcy law, an act that could constitute an obstruction of the bankruptcy proceedings. Although Judge Bason's ruling was upheld by the District Court, it was ultimately overruled by the Circuit Court. (See *infra*.)

INSLAW's Conversion: INSLAW also alleged that the Department unsuccessfully attempted to have Harry Jones detailed from the U.S. Trustee's office in New York to Washington to take over the INSLAW bankruptcy for the purpose of causing INSLAW's liquidation. INSLAW's proof of this claim consisted of:

The sworn statement (later recanted) of Judge Blackshear that he was pressured to detail Harry Jones to Washington to convert INSLAW's bankruptcy status, and

Director Stanton's alleged unsuccessful pressure on U.S. Trustee William White to convert the bankruptcy case into a chapter 7 liquidation.

The Public Integrity Section (the Section) notified INSLAW that it would investigate some of the allegations made by the Hamiltons. Subsequently, the Department reviewed INSLAW's allegations under the independent counsel statute to determine whether the information provided was sufficient to trigger a preliminary investigation of any person covered by the statute,²⁸⁶ including Edwin Meese, Arnold Burns, and Lowell Jensen. By memorandum dated February 29, 1988, William Weld, the Department's Criminal Division Assistant Attorney General, stated that the Section concluded that INSLAW did not provide specific information sufficient to constitute grounds to begin a preliminary investigation of the need for an independent counsel.²⁸⁷ The Department stated that the facts presented were essentially unsupported speculation that

²⁸⁵The bankruptcy judge, George Bason, ruled in INSLAW's favor, and in a scathing opinion found that the Department "acted in bad faith, vexatiously, wantonly, and for oppressive reasons." (Judge Bason's opinion of September 2, 1987 [Opinion], at p. 213.) The judge further found that the Department "intentionally" induced INSLAW into agreeing to provide the proprietary enhancements to the Department. (Opinion at p. 206, 57.)

²⁸⁶The independent counsel statute, 28 U.S.C. § 591-99, provides that, upon receipt of information regarding the commission of a crime by a person covered by the statute, the Department conduct a preliminary investigation of the information to determine whether it constitutes grounds to investigate, i.e., whether any of those persons "may have violated" any Federal criminal law. The preliminary investigation is limited to a determination of the credibility of the source (the statute, 28 U.S.C. § 591(a)(2)). The Attorney General is a covered person under the independent counsel statute. 28 U.S.C. § 591(a)(2). The Deputy Attorney General is a covered person under the statute. 28 U.S.C. § 591(a)(3). D. Lowell Jensen is a covered person under 28 U.S.C. § 591(a)(4) and (5) because of his former position with the Justice Department.

²⁸⁷Memorandum of William F. Weld, Assistant Attorney General, Criminal Division, February 29, 1988, p. 1.

persons covered by the independent counsel statute were involved in a scheme to defraud. The Assistant Attorney General concurred with a recommendation that the review be closed "due to lack of evidence of criminality."

The Department's investigation of these charges was shallow and incomplete. Further, it appeared to have been more interested in constructing legal defenses for its managerial actions rather than investigating claims of wrongdoing which, if proved, could undermine or weaken its litigating posture. Mr. Richardson also stated that the Section had not, in fact, conducted a comprehensive, thorough, or credible investigation, and that the investigation was a cursory review of INSLAW's charges. In a May 11, 1989, letter to Attorney General Thornburgh, Richardson repeated those concerns. He stated he believed that there was a conflict of interest arising from the Department defending itself against a civil suit brought by INSLAW while at the same time dealing with allegations of criminal conduct by top management that would, if proven, destroy the Department's defense. He also stated that it was apparent that the Department's all-out, no-holds-barred defense in INSLAW's civil suit had been given priority over the criminal investigation.

Mr. Richardson noted in this letter that no one from the Section contacted him or Mr. Charles Work, INSLAW's counsel, nor did they seek information from the Hamiltons. In addition, they failed to contact witnesses who had provided information to INSLAW. In fact, in December 1988 the Hamiltons provided the Section with the names of thirty individuals who could provide information pertinent to this investigation. In his letter, Mr. Richardson concluded that the only solution would be the appointment of an independent counsel. On August 10, 1989, Mr. Work also wrote to the Department, calling attention to the inadequacies of the Section's purported investigation, but the Department did not reopen the matter.

E. DEPARTMENT'S RESPONSE TO COURT FINDINGS OF POSSIBLE PERJURY

In a parallel initiative, Judge Bason recommended on July 17, 1987, to Attorney General Meese that he designate an appropriate official outside the Department to review the disputes between INSLAW and the Department and to give the Attorney General independent advice on this matter.²⁸⁸

Judge Bason stated in his Findings of Facts and Conclusions of Law that during the trial he observed the witnesses very closely and reached certain "definite and firm convictions" based on their demeanor, as well as on an analysis of the inherent probability or improbability of their testimony. On pages 172 through 177 of his Findings of Facts, Judge Bason commented on the credibility of the Department's witnesses and pointed strongly to a pattern of deception and coverup by Department employees. This pattern of deception suggests the possibility of perjury and coverup that can only be completely investigated by someone who is independent of the Department of Justice.

The following are extracts from Judge Bason's statements:

²⁸⁸July 17, 1987, letter from Judge George Bason to Attorney General Edwin Meese.

Lawrence McWhorter, Deputy Director for the Executive Office for U.S. Attorneys (EOUSA) was "totally unbelievable."

Jack Rugh, Assistant Director, Information Systems Staff for EOUSA was "also not believable."

William Tyson's (Director EOUSA), statement that Mr. Brewer's attitude toward INSLAW was positive, constructive and favorable "... is so ludicrous in light of the evidence taken as a whole it is difficult for this court to believe any of Mr. Tyson's testimony."

C. Madison Brewer, Director, Office of Management Information Systems & Support, EOUSA "... was most unreliable, and entirely colored by his intense bias and prejudice against Hamilton and INSLAW."

Peter Videnieks, Contracting Officer, Justice Management Division was "... substantially unreliable. Videnieks was under Brewer's domination and was thoroughly affected by Brewer's bias."

The testimony of Janis Sposato, Administrative Counsel, Justice Management Division, "is to be viewed with considerable skepticism. Given Sposato's position as a DOJ ethics officer, her casual treatment of repeated serious allegations of outrageous misconduct by Brewer can only be described, even charitably, as willful blindness to the obvious."

Judge Bason concluded his comments by stating that:

The acts of DOJ as described in the foregoing findings of fact were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons—to drive INSLAW out of business and to convert, by trickery, fraud and deceit, INSLAW's PROMIS software.

Apparently in response to Judge Bason's charges as well as INSLAW's request for the appointment of an independent counsel, Arnold Burns, the Deputy Attorney General, asked the Civil Division for advice on the question of the appointment of an outside party to review the INSLAW matter. The Deputy Assistant Attorney General of the Civil Division, Stuart Schiffer, wrote to Richard Willard, Assistant Attorney General, Civil Division, that the idea "would not achieve productive results." Both Mr. Schiffer and Mr. Willard agreed that taking this "extraordinary step" would only serve to highlight the matter and give those criticizing the Department an opportunity to argue that resorting to this remedy proved by inference that events warranted an investigation.

Mr. Schiffer crystallized the Department's defensive posture on this matter when he wrote that his reasons for supporting the denial of an outside investigation were founded on whether the Department could achieve any benefit from such a study. According to Mr. Schiffer:

I remain convinced that this idea would not achieve productive results. ... I have serious doubts whether we could achieve any benefit from the outside person's study. ... [T]he outside person might find instances in

which the Department could have better handled the contract (with 20/20 hindsight this is not unlikely). These deficiencies, no matter how minor, would be seized upon and magnified by the court as admissions "at last" of the Government's wrongdoing.²⁸⁹

Mr. Schiffer concluded that the use of an outside person to investigate and report on the Department's handling of the INSLAW contract was, a "no-win" option and the leadership of the Civil Division passed this recommendation on to Deputy Attorney General Burns.²⁹⁰

F. INSLAW REQUEST FOR INDEPENDENT COUNSEL

INSLAW filed a Petition for Writ of Mandamus on December 20, 1989, requesting that the District Court order a full and thorough investigation of the INSLAW allegations and direct the Attorney General to appoint an independent counsel. The petition asserted that the Department had not made a serious effort to determine whether or not INSLAW's allegations, which were supported in court, were true. The Department moved to dismiss the petition. A thorough investigation of the Department's handling of the PROMIS contract was again denied INSLAW on September 8, 1989, when the D.C. Court of Appeals turned down INSLAW's request for an independent counsel to investigate alleged misconduct by top Department management. This request was an appeal of the Department's May 4, 1988, determination that the appointment of an independent counsel was not warranted. The court denied the request because the Attorney General had not applied to the court for the appointment of an independent counsel as required by law. Therefore, the court concluded that it had no jurisdiction in the matter.

On September 27, 1990, the court denied the petition. The court added in a footnote that:

... the House Judiciary Committee is presently investigating the activities of the Department and its then-officials, employees, and friends as to the extent of a conspiracy of the type and magnitude alleged by INSLAW. The Washington Post reports that "[a]fter months of negotiations, Attorney General Dick Thornburgh has now assured the Judiciary Committee Chairman Jack Brooks (D-Tex.) that his inquiry will have the full cooperation of the department. Committee investigators will have direct access to department personnel and documents, and employees will be assured that they can testify without fear of retribution. ... Clearly, this house committee is a body far better placed in the governmental scheme of things than the court (with resources unmatched in the judiciary) to undertake such an evaluation."²⁹¹

²⁸⁹ Memorandum from Stuart E. Schiffer, Deputy Assistant Attorney General, Civil Division, to Richard K. Willard, Assistant Attorney General, Civil Division, July 7, 1987, p. 1-2.

²⁹⁰ July 7, 1987, memorandum from Stewart Schiffer, Deputy Assistant Attorney General, Civil Division, to Richard Willard, Assistant Attorney General, Civil Division titled "INSLAW."

²⁹¹ Unfortunately, the cooperation suggested by the District Court never occurred. Almost 1 year after the ruling, the committee was forced to issue a subpoena for the documents on July

Continued

Sadly, such cooperation with this committee never materialized. In fact, the committee remains embroiled in a conflict with the Department over full access to information. As stated earlier in this report, in July 1991 a subpoena even had to be issued to compel the production of key Justice Department documents and files related to INSLAW. This occurred 2 full years after the initial request to Attorney General Thornburgh to cooperate with the committee's INSLAW investigation. Even today, sensitive documents are missing and certain files which the Department claims are related to ongoing criminal investigations and to sensitive law enforcement matters are still being denied the committee.

VII. TOP DEPARTMENT OFFICIALS FRUSTRATED COMMITTEE'S INVESTIGATION

The committee's investigation often encountered Department barriers to documents and agency personnel. While the committee could not prove that the Department deliberately conspired to conceal evidence of criminal wrongdoing, serious questions have been raised about the possible: obstruction of a congressional investigation; destruction of Department documents; and, witness tampering by Department officials. The following discussion demonstrates the considerable effort by the Department to delay and deter this committee from conducting a complete and thorough investigation of the INSLAW matter. Furthermore, it appears that these are similar to barriers faced by the Senate Permanent Subcommittee on Investigations when it attempted to conduct its investigation into the INSLAW allegation.²⁹²

The committee eventually overcame many of the obstacles put in its path by the Department and established several important precedents. First, committee investigators were ultimately given unrestricted access to all contract, personnel and administrative files of the agency, which consisted, in the INSLAW case, of several thousand documents. Second, access was given to the sensitive files of the Office of Professional Responsibility (OPR) which included not only the reports of that Office but individual interviews and sworn statements conducted during OPR investigation. Third, for the first time known to the committee, the FBI agreed to permit one of its field agents, Special Agent Thomas Gates, to give a sworn statement to committee investigators and to otherwise cooperate with the committee. Fourth, the Department agreed to allow Justice officials and employees to give sworn statements

25. 1991. See section II, entitled "Committee Investigations, Prior Studies, Hearings and Subcommittee Proceedings."

292. During April 1988, the Department began to hinder the investigation of the INSLAW matter by PSI. After failing to convince PSI not to conduct an inquiry, the Department not only failed to cooperate with PSI, but also raised barriers to restrict subcommittee access to information and to influence witnesses not to cooperate with the investigation (p. 46 of PSI report). The Department: (1) contended that members of the INSLAW litigation team be present during interviews with Department personnel and (2) provided only limited information about the scope and results of its investigations on the conduct of Department personnel.

PSI concluded that the Department's roadblocks to the subcommittee's investigation: "...resulted in substantial delays and seriously undercut the subcommittee's ability to interview in an open, candid, and timely manner, all those Department employees who may have had knowledge of the INSLAW matter... [I]n requiring departmental attorneys to simultaneously represent both the Department and individual Department employees in this investigation, the Department evoked basic principles of conflict of interest and the attorney-client relationship."

without a Department attorney present. Finally, under the force of a subpoena issued by the subcommittee, the Department provided more than 400 documents, which it had identified as related to ongoing litigation and other highly sensitive matters and "protected" under the claims of attorney-client and attorney work product privileges.

A. DEPARTMENT ATTEMPTS TO THWART COMMITTEE INQUIRY

The committee's investigation began with an August 1989 letter from Chairman Brooks to Attorney General Thornburgh initiating an investigation into a number of serious allegations regarding the Department of Justice's (DOJ) handling of a contract with INSLAW, Inc., and asked for the Department's full cooperation with committee investigators.

Attorney General Thornburgh responded on August 21, 1989; and while seriously questioning the need for a comprehensive investigation, he stated:

Nevertheless, I can pledge this Department's full cooperation with the committee in this matter, and I have so instructed all concerned agency employees, with the understanding that we will have to make arrangements to protect any information, documents, or testimony that we may proffer to the committee from interested vendors and litigants, including INSLAW.²⁹³

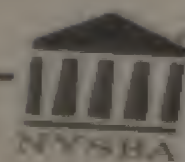
Armed with the Attorney General's pledge of cooperation, the committee nevertheless immediately encountered severe resistance by Justice officials when they were asked to provide access to agency files and personnel. On September 29, 1989, Department officials told committee investigators that they would not be given full and unrestricted access to agency files and individuals associated with the INSLAW contract. The Department insisted that committee investigators instead go through the cumbersome and lengthy process of putting all requests for documents, interviews and other materials in writing.²⁹⁴ Initially, even INSLAW's contract files, which were readily accessible to the General Accounting Office (GAO), were denied to the committee. The Department also insisted that a Department attorney be present during any interviews of Department employees. During this time even individuals who had left the Department refused to be interviewed. This refusal possibly stems from pressure exerted by the Department which strongly believed that: "Justice has to speak through one voice," regarding the INSLAW matter.²⁹⁵

As part of these negotiations the Department's Office of Legislative Affairs (OLA) informed committee investigators that some of the requested information would be made available, but because of Privacy Act and trade secret concerns the Department wanted the chairman to put each request in writing. The alternative was for

293. Letter from Attorney General Richard Thornburgh to the Honorable Jack Brooks, chairman, Committee on the Judiciary, August 21, 1989, pp. 1-2.

294. Letter from Carol T. Crawford, Assistant Attorney General to the Honorable Jack Brooks, chairman, Committee on the Judiciary, September 29, 1989, p. 1.

295. Memorandum to file, October 16, 1989, documenting a telephone conversation with Jim Cole, Deputy Chief of the Department's Public Integrity Section. Also see January 9, 1990, letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh.



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the committee to obtain individual releases from as many as 50 individuals. The committee's request for access to the Public Integrity Section files was also denied. OLA also stated that the Office of Professional Responsibility was concerned with the Privacy Act and regarded its files "as highly sensitive, potentially hurtful, and is concerned that the information could be misused."

As a result of the Department's position, the chairman stated in a January 9, 1990, letter to the Attorney General that he could not devise any better way to preclude an investigative body from obtaining objective and candid information, on any matter, than by intimidating employees who otherwise may cooperate with an investigation.²⁹⁶ He added that the presence of a Department attorney would undercut the committee's ability to interview persons in an open, candid, and timely manner, and he was deeply troubled by the continued lack of cooperation by Department employees. The chairman again personally informed the Attorney General of his concerns about the continued delays and resistance to providing needed information when they met on January 29, 1990.

The chairman requested immediate, full and unrestricted access to Department employees and documents.²⁹⁷ In a February 1990, response the Department agreed to allow its employees to be interviewed without Department counsel present. However, the Department delayed access to numerous files and negotiated for several months about the confidentiality of a variety of documents requested for the investigation.

The Attorney General and the chairman reached another agreement in April 1990 on access to information. At this time, the Department agreed to provide free and unrestricted access to INSLAW files and Department employees. At the Department's fiscal year 1991 authorization hearings on May 16, 1990, Attorney General Thornburgh again indicated that the Department had decided to provide access to the committee for the INSLAW investigation.

I have discussed with you and other members of this and other committees, our willingness to examine on a case-by-case basis any request that comes from the Congress. . . But rather than lay down a bunch of reasons why we can't release materials I prefer . . . to discuss ways and means in which we can work with you and your staff to figure out ways that we can produce materials as I think we have accomplished in your request regarding INSLAW and Project Eagle.²⁹⁸

The Attorney General's statement clearly indicated a willingness to supply the requested materials to the committee as long as some agreement was reached to protect this material from being improperly released. Unfortunately, the Department's ability to abide with its agreement was short lived.

On June 15, 1990, the Department informed committee investigators that there were 64 boxes of INSLAW litigation files which

²⁹⁶ Letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh, January 9, 1990, pp. 1-2.

²⁹⁷ *Ibid.*, p. 2.

²⁹⁸ Committee on the Judiciary hearing, Department of Justice Authorization for Appropriations for Fiscal Year 1991, May 16, 1990, Serial No. 94, p. 48.

they listed on a 422-page index. At this time, Department officials refused to give committee investigators the index because it included "privileged" information that the Department was concerned would be made available to INSLAW.²⁹⁹ Finally, on June 28, 1990, the Department's Acting Assistant Attorney General for Legislative Affairs agreed to provide the litigation file indices on the condition that they not be released to the public by the committee.³⁰⁰ However, Department officials refused to identify what documents were privileged or available. At the same time numerous interviews and sworn statements were being taken by committee investigators; however, these interviews were impaired by the lack of documentation from which to draw investigation-related questions.

By letter dated September 6, 1990, the OLA Deputy Assistant Attorney General again refused to permit committee staff access to what he declared were "privileged" work-product and attorney/client documents.³⁰¹ This judgment originated from Ms. Sandra Spooner, lead Department counsel on INSLAW's litigation, who reviewed each file and removed those she believed to be "privileged" attorney/client or work product documents. Committee investigators finally gained access to the Department's "INSLAW Files" in late October 1990. However, soon thereafter the Department increased the number of documents and/or files withheld from an initial 175 to 190. On November 19, 1990, the Department again increased the number of documents and/or files withheld from the committee to 193.³⁰²

The chairman protested the additional obstacles raised by the Department. The Attorney General responded that his pledge of free and unrestricted access did not include, "privileged" attorney-client or work product documents.³⁰³ This posture became the focus of a hearing on December 5, 1990.

The Judiciary Committee's Subcommittee on Economic and Commercial Law convened on December 5, 1990, to address the Department's refusal to provide access to "privileged" INSLAW documents. During this hearing Steven R. Ross, General Counsel to the House Clerk, stated that:

...the Attorney General's claimed basis for this withholding of documents is an attempt to create for himself and his functionaries within the Department an exemption from the constitutional principle that all executive officials, no matter how high or low, exercise their authority pursuant to law and that all such public officials are accountable to legislative oversight aimed at ferreting out waste, fraud, and abuse.³⁰⁴

Mr. Ross added that the Department was attempting to redefine committee investigations to mean that congressional investigations

²⁹⁹ House Judiciary Committee interview of Sandra Spooner, Department of Justice official, on June 15, 1990.

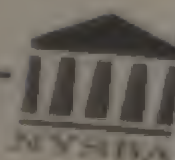
³⁰⁰ House Judiciary Committee hearing, December 5, 1990, Serial No. 114, pp. 196-197.

³⁰¹ *Ibid.*, pp. 203-204.

³⁰² The amount of material included approximately 970 files/documents.

³⁰³ Letter from Attorney General Thornburgh to the Honorable Jack Brooks, chairman, Committee on the Judiciary, September 26, 1990.

³⁰⁴ House Judiciary Committee hearing, December 5, 1990, Serial No. 114, p. 76.



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are justifiable only as a means of facilitating the task of passing legislation. Mr. Ross stated:³⁰⁵

What that proposed standard would do would be to eradicate the time-honored role of Congress of providing oversight, which is a means that has been upheld by the Supreme Court on a number of occasions, by which the Congress can assure itself that previously passed laws are being properly implemented.

After providing several examples of Department attempts to withhold information by claiming attorney/client privilege, including Watergate, Ross concluded by stating:³⁰⁶

It is thus clear, in light of history of claims by the Department that it may be excused from providing the Congress in general and this committee in particular with documents that it deems litigation sensitive, that Congress' broad power of investigation overcomes those litigative concerns.³⁰⁷

After the December 1990 hearings, Attorney General Thornburgh once again agreed to provide the committee full and unrestricted access to all INSLAW-related documents.³⁰⁸ Both sides agreed to a two-step procedure in which documents would be reviewed first by committee investigators followed by a written request for copies of a specific item.³⁰⁹ Access was given for the first time in May 1991, to the files of the Civil Division's Chief Litigating Attorney, Ms. Sandra Spooner. These files consisted of documents and information which had been consolidated from various quarters of Justice's office complex, located at 550 11th Street, N.W., Washington, DC. During the review of these files, committee investigators were informed that Ms. Spooner had self-selected and removed approximately 450 documents on the purported basis of various asserted "privileges," including "attorney work product" and "attorney client" despite the agreement between the Branches and despite the confidentiality safeguards established to protect just such documents. She also removed all documents related to communications between the Department and Congress, as well as those related to the Department of Transportation Board of Contract Appeals proceedings. Ms. Spooner also informed the investigators for the first time that an indeterminate number of documents—and possibly entire file folders—were missing.

³⁰⁵ Ibid.
³⁰⁶ In the case of *McGuire v. Daugherty*, the Supreme Court focused specifically on Congress' authority to study "charges of misfeasance and nonfeasance in the Department of Justice." The court ruled with approval the subject to be investigated by the congressional committee was the administration of the Department, whether its functions were being properly discharged or being neglected or misdirected. In its decision, the Supreme Court sustained the contempt arrest of the Attorney General's brother for withholding information from Congress, since Congress "would be materially aided by the information which the investigation was calculated to elicit." Thus the Supreme Court itself has declared null any attempt at pretensions that oversight could be barred regarding "whether the Attorney General and his assistant were performing or neglecting their duties in respect of the institution and protection of proceedings."

³⁰⁷ Committee on the Judiciary hearing, op. cit., p. 81.
³⁰⁸ Letter from Attorney General Richard Thornburgh to the Honorable Jack Brooks, chairman, dated April 23, 1991.
³⁰⁹ Letter from the Honorable Jack Brooks to Attorney General Richard Thornburgh, dated April 23, 1991.

On May 29, 1991, committee staff requested that the Department abide by the Attorney General's April 23 agreement and provide copies of all documents contained in the INSLAW index. The Department was also requested to explain why some of Ms. Spooner's files could not be found.³¹⁰

The Assistant Attorney General for Legislative Affairs wrote on May 29, 1991, that the Attorney General's April 23 agreement did not include documents related to: (1) matters pending before the District Court, (2) appellate litigation, or (3) matters pending before the DOTBCA.³¹¹ Consequently, the committee was denied over 400 documents and files. The Assistant Attorney General made no mention of the missing files in his letter.

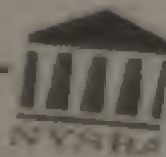
B. AUTHORIZATION AND OVERSIGHT HEARINGS

On July 8, 1991, the committee chairman announced his plans to hold authorization and oversight hearings on July 11 and 18 to discuss the Department's fiscal year 1992 budget request. The chairman indicated that as part of these hearings, he would be asking, among other things, Attorney General Thornburgh about his failure to live up to the several previous commitments he had made to the committee to provide full and open access to the Department's INSLAW files. Chairman Brooks opened the July 11, 1991, hearing by noting that oversight of executive branch policy and activity is at the heart of the congressional mandate as an integral component of the checks and balances architecture of constitutional government. He further noted that Department officials had continued to resist meaningful outside review of their activities by refusing to cooperate with GAO and congressional investigations. Chairman Brooks expressed grave concern that the Department seemed increasingly bent on pursuing controversial theories of executive privilege and power at the expense of removing government from the sunshine of public scrutiny and accountability.³¹² This tendency appeared to be an increasing problem under the stewardship of Attorney General Thornburgh and had seriously hindered and delayed several congressional investigations, including the INSLAW case.³¹³

The chairman concluded the hearing by stating that the Judiciary Committee must carefully consider the actions needed to be taken to require production of documents requested from the Department and urged that all committee members attend the July

³¹⁰ Letter from chief investigator of the House Judiciary Committee to Assistant Attorney General J. Michael Luttig, dated May 29, 1991.
³¹¹ Letter from Assistant Attorney General W. Lee Rawls to the chief investigator of the House Judiciary Committee, dated May 29, 1991.

³¹² House Judiciary Committee hearing, July 11, 1991, Serial No. 12, p. 1.
³¹³ During the hearing, the chairman indicated that the Attorney General, who was scheduled to appear before the subcommittee on July 18, 1991, was asked to be prepared to provide his reasoning behind the interbranch conflicts over GAO and congressional access to Justice documents, including those related to INSLAW. Steven Ross testified that the Department's actions concerning the release of documents in the INSLAW matter were yet another instance in which the Department has attempted to thwart a congressional inquiry into possible executive branch wrongdoing. Mr. Ross noted that "8 months had lapsed since the last hearing on access to records problems at Justice, and that committee investigators were still being refused access to let alone copies of, hundreds of INSLAW related documents." Mr. Ross also stated that "11 same baseline arguments raised and rejected" at the subcommittee's December 5, 1990, hearing held to discuss this issue were again being trotted out by the Department.



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18, 1991, hearing, during which Attorney General Thornburgh would be asked to respond to these issues.³¹⁴

On July 18, 1991, the committee reconvened to review the Justice Department's fiscal year 1992 authorization request for appropriations and to hear the testimony of Attorney General Thornburgh. Unfortunately, the Attorney General decided at 7 p.m. the night before to refuse to appear.³¹⁵

Committee Chairman Brooks responded to the Attorney General's unprecedented nonappearance to a duly noticed hearing:

In light of the extreme importance of this proceeding, it is particularly unfortunate and deeply disturbing that the Attorney General notified us last night, late last night, that he would refuse to appear before us this morning. He refuses to attend for a myriad of reasons—even though his appearance was duly scheduled for 1 full month.³¹⁶

The chairman noted the seriousness of the issues facing the Department and the need to resolve them as quickly as possible. He was particularly concerned with the Department's lack of cooperation with the committee on the INSLAW investigation. He concluded by expressing concern over the "great damage" that had been done to the relationship between the Judiciary Committee and the Justice Department stating:

I am shocked and saddened by the appearance of the empty chair before us and all the other chairs that he asked to be reserved for his people. The unanswered request and the delayed response are becoming the symbols of an increasingly remote and self-centered Justice Department that seems bent on expanding the accepted boundaries of executive branch power and prerogatives.³¹⁷

C. THE DEPARTMENT REPORTS KEY SUBPOENAED DOCUMENTS MISSING

On July 25, 1991, the Subcommittee on Economic and Commercial Law issued a subpoena to the Attorney General requiring that he provide all documents within the scope of the committee investigation listed in the subpoena.³¹⁸ On July 29, the Attorney General provided as many subpoenaed documents as possible, but stated that some documents were lost—including, but not necessarily limited to, many documents from Ms. Spooner's files, such as:³¹⁹

A memorandum to Ms. Spooner which allegedly involved a discussion and chronology of INSLAW's data rights claim.

³¹⁴ *Ibid.*, p. 134.

³¹⁵ Attorney General Thornburgh stated: "I would also like to express my personal appreciation for the courtesy you have extended to me, Mr. Chairman, throughout my tenure as Attorney General. It is my impression that this committee has established a positive working relationship with both my office and the many components of the Department." Statement of Attorney General Richard Thornburgh before the House Committee on the Judiciary, regarding Department of Justice Authorizations for Fiscal year 1992, July 18, 1991.

³¹⁶ House Judiciary Committee hearing, July 18, 1991, Serial No. 12, p. 137.

³¹⁷ *Ibid.*, pp. 137, 139.

³¹⁸ The chairman's July 31, 1991, statement before the House Subcommittee on Economic and Commercial Law.

³¹⁹ A total of 68 sensitive Justice documents and 14 files pertaining to INSLAW are still missing or incomplete.

Ms. Sandra Spooner's notes to file concerning the transcript of Peter Videnieks' PSI deposition.

An August 10, 1989, facsimile with attachment from Ms. Janis Sposato to Ms. Sandra Spooner concerning a response to Chairman Brooks.

A May 28, 1989, routing slip from Elizabeth Woodruff to Ms. Spooner concerning the whistle-blower protection statute.

Ms. Spooner's notes described as numerous attorney notes.

An August 4, 1988, memorandum from Stuart Schiffer to John Bolton transmitting a memorandum from Stuart Schiffer to Thomas Stanton.

A September 21, 1989, memorandum from Roger Tweed to Ms. Spooner regarding facilities for use by the INSLAW case auditors.

Patricia Bryan's notebook of outlines, notes, and documents prepared by counsel to facilitate compromise discussions.

Also, many documents that were provided were incomplete (i.e., missing pages or attachments), or were of such poor quality that they could not be read. Because Ms. Spooner's files lacked an index, it was also impossible to ascertain whether other documents or files were missing as well. Based on the numbering system used by the Department, however, it appears numerous additional documents are missing.

On July 30, 1991, Mr. W. Lee Rawls, Assistant Attorney General, stated that Ms. Spooner's documents not provided to the committee:

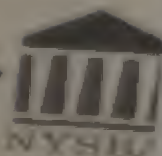
...ha[ve] not yet been found and neither Ms. Spooner nor any other employee who would normally have access to it knows how it may have been lost... Under these circumstances, the litigation team under Ms. Spooner's direction has endeavored to reconstruct the missing volume from other files containing the same documents. We are now providing the committee with a reconstructed volume that contains all but eight of the fifty-one documents that were contained in the original file.³²⁰

It is unclear whether the Department formally investigated why these documents disappeared, as the committee requested in June 1991.

During a July 31, 1991, subcommittee meeting convened to discuss the Attorney General's noncompliance with the subpoena, Chairman Brooks concluded:

My concern with the missing documents flows from the fact that our investigation is looking into allegations by those who claim that high level Department officials criminally conspired to force INSLAW into bankruptcy and steal its software. It is alleged this was done to benefit friends of then Attorney General Edwin Meese. Under these circumstances, I fully expected that the department would take great care in protecting all these documents. Unfortunately, the fact of missing documents will now

³²⁰ Letter from Assistant Attorney General W. Lee Rawls to the chairman, dated July 30, 1991.



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leave lingering questions in the minds of some who have closely followed the investigation about whether documents may have been destroyed.³²¹

The question of unauthorized destruction of Government documents again came up recently when the committee received information from Ms. Lois Battistoni, a former Justice Department employee, that Department employees were involved in the illegal destruction (shredding) of documents related to the INSLAW case. This matter has not been investigated by the committee.³²²

D. DEPARTMENT INTERFERES WITH MICHAEL RICONOSCIUTO'S SWORN STATEMENT TO THE COMMITTEE—REFUSES REQUEST TO INTERVIEW DEA AGENTS

On March 29, 1991, Mr. Riconosciuto was arrested by DEA special agents for possession and distribution of a controlled substance. It is important to stress that Riconosciuto began cooperating with the Hamiltons and provided the committee with information about the alleged conspiracy by the Justice Department to steal INSLAW's PROMIS software well before the time of his arrest.

The Department interfered with committee attempts to obtain information from Mr. Riconosciuto. Following Mr. Riconosciuto's arrest, the committee contacted his attorney, John Rosellini, to request that the committee be given permission to interview his client. On April 1, 1991, arrangements were made to conduct the interview with Mr. Riconosciuto. Facilities for a private interview were made available by the Kitsap County chief jailer, Larry Berthoff, for the committee interview of Mr. Riconosciuto, which was to be conducted on April 4, 1991.

During the negotiations with Mr. Riconosciuto's attorney, the Department called the committee and advised that, if the interview was to be conducted at all, it would be held at the U.S. Court House in Seattle, WA. Prior to commencing the interview of Mr. Riconosciuto, the Department attorney handling Mr. Riconosciuto's prosecution was asked by committee investigators to provide a sworn statement that the committee's interview of Riconosciuto would not be monitored or recorded by the Department. The Department attorney refused to provide the statement, advising that he would not under any circumstances agree to such a request. He stated that it was not Department policy to record private conversations held between clients and their attorney, and he considered the committee as being in the same category.

Following Mr. Riconosciuto's sworn statement, the committee asked for permission from the Department to interview the DEA arresting agents. This request was critical because Mr. Riconosciuto had alleged that a tape recording of a conversation between him and a Justice Official (Mr. Peter Videnieks) was confiscated by DEA agents at the time of his arrest. This tape allegedly shows that Mr. Videnieks threatened Mr. Riconosciuto with

³²¹The chairman's July 31, 1991, statement before the House Subcommittee on Economic and Commercial Law.

³²²As mentioned before, Lois Battistoni is a former Department of Justice Criminal Division employee.

retribution if he talked to the Judiciary Committee investigators. As has been the practice throughout this investigation the Department refused to cooperate with the committee's request, using the justification that Mr. Riconosciuto's prosecution was an ongoing investigation. The Department has also refused to allow the committee access to its investigative files on Mr. Riconosciuto.

Since his arrest, Mr. Riconosciuto has been convicted of the drug related charges, and he is currently imprisoned. Although this incident diminishes his credibility as a witness, the timing of the arrest, coupled with Mr. Riconosciuto's allegations that tapes of a telephone conversation he had with Mr. Videnieks were confiscated by DEA agents, raises serious questions concerning whether the Department's prosecution of Mr. Riconosciuto was related to his cooperation with the committee. As described in other sections of this report, the committee received sworn testimony and recovered documents which support aspects of Mr. Riconosciuto's story, and ties Mr. Riconosciuto, Dr. Brian, and an individual named Robert Booth Nichols to U.S. intelligence agencies and in the case of Mr. Nichols, possibly, organized crime.

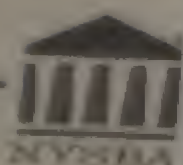
E. DEPARTMENT OFFICIAL MAY HAVE ATTEMPTED TO INFLUENCE A KEY WITNESS

During the sworn statement of FBI Special Agent Thomas Gates on March 25, 1992, he and his attorney, Richard Bauer, stated that Ms. Faith Burton from the Department's Office of Congressional Affairs had told them that the committee, as a matter of policy, provided the Department with copies of all depositions taken in the INSLAW investigation. The clear implication was that the Department would know everything that had been said by Special Agent Gates in his sworn testimony. It was apparent that this lack of confidentiality concerned Special Agent Gates' attorney and this may have had a chilling effect on Special Agent Gate's testimony to the committee. Special Agent Gates and his attorney were informed that the committee policy in fact prohibited giving copies of the confidential sworn statements to anyone but the person who gave the statement or to that person's attorney.³²³

On March 26, 1992, committee investigators met with Ms. Burton to discuss this issue. Ms. Burton stated that the allegations made by Special Agent Gates and his attorney were "totally false," and that it didn't make any sense because she "knew the policy that the Department didn't get the transcripts." Ms. Burton stated Special Agent Gates and his attorney must have misunderstood her and attributed the misunderstanding to their long flight. Committee investigators asked Ms. Burton if she said anything to imply directly or indirectly that the Department received or reviewed copies of the committee's sworn statements, she responded "absolutely not."

On March 26, 1992, Special Agent Gates and his attorney were informed of Ms. Burton's response and Special Agent Gates was

³²³Confidential statements such as Special Agent Gates' are not made available or released in any manner. However, other types of sworn statements may be included in the printed record.



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asked if it was possible that he misunderstood what Ms. Burton had said. Special Agent Gates responded:

Its always possible, but it was fairly clear to me, what she said.

Mr. Bauer further stated that there was:

...a clear indication that there was a receipt of transcripts and a review of transcripts.

In fact, Mr. Bauer and Special Agent Gates stated that Ms. Burton had told them before their meeting with committee investigators that, "to date, the Department has reviewed all transcripts and no wrongdoing has been found." [Emphasis added.]

VIII. JUDGE BASON'S ALLEGATIONS OF JUSTICE DEPARTMENT'S IMPROPER INFLUENCE ON THE JUDICIAL SELECTION PROCESS

In February 1984, Judge Bason was appointed to fill the unexpired term of Judge Roger Whalen who voluntarily resigned as the bankruptcy judge for the District of Columbia. Judge Bason was the sole bankruptcy judge for the District of Columbia from February 1984 through February 1988. As a result, he personally heard the sworn statements and observed the witnesses during the INSLAW litigation.

In 1987, Judge Bason sought reappointment pursuant to the bankruptcy amendments and Federal Judgeship Act of 1984. Judge Bason, however, lost his reappointment bid and was replaced by S. Martin Teel, Jr., a Department attorney who had represented the Government and who had appeared before Judge Bason in the INSLAW bankruptcy case. According to Judge Bason, Martin Teel was appointed to the judgeship through his primary expertise focused on tax law with extremely limited bankruptcy litigation experience.³²⁴

³²⁴ By letter dated January 12, 1988 (on file with committee), to the Honorable Patricia M. Wald, Chief Judge, U.S. Court of Appeals, Judge George Francis Bason, Jr., U.S. bankruptcy judge, requested a hearing before the Judicial Council of the District of Columbia Circuit before, among other reasons:

"As to the criterion of 'substantial legal experience,' the other candidate [Judge Teel] has had a considerably shorter total period of legal experience. He started as a trial attorney in the Justice Department's Tax Division, and remained such for approximately 10 years. He then became a reviewer for another period of years. For the past 7 years he has been a regional assistant section chief. As a reviewer and as an assistant section chief his duties have largely involved reviewing other people's work, not producing his own independent work, and not appearing in court. He has appeared in the court over which I preside [Bankruptcy Court] no more than two or three times in the last 4 years. When he has appeared he has remained mostly silent and has left it to his subordinates to argue the matter before the court. To my knowledge... the other candidate [Judge Teel] has never appeared before the appellate court." [January 12, 1988, letter from Judge George Francis Bason, Jr., U.S. bankruptcy judge, to the Honorable Patricia M. Wald, Chief Judge, U.S. Court of Appeals, p. 6.]

In an interview of Judge Teel conducted by the committee on February 28, 1992, Judge Teel indicated that of the six cases he had listed on his application as representing the most important litigation in which he had been involved, all six had nothing to do with bankruptcy law. In a second interview conducted on March 27, 1992, Judge Teel was asked about his experience. Judge Teel stated that he was qualified for the position because: He had 6 years of fairly extensive bankruptcy experience; he was a legal scholar; he had worked on collection matters; as a member of his experience as a tax litigator for the Department of Justice, he was able to understand and effectively handle complicated cases; he had broad experience as a litigator and that this litigation had been exclusively civil in nature; he had dealt with bankruptcy law priority issues; that he had extensive knowledge and grasp of the Rules of Evidence and Procedure. Judge Teel provided committee investigators with a letter outlining his qualifications to be a bankruptcy judge (on file with committee).

After learning that his bid for reappointment failed, Judge Bason alleged that the Department had influenced the selection process resulting in his removal from the bench.³²⁵

On December 5, 1990, Judge George F. Bason, Jr., testified before the subcommittee under oath that his failed bid for reappointment as a bankruptcy judge was the result of improper influence from within the Department. Judge Bason also stated that new information came to his attention that in his opinion leaves no doubt that the Department manipulated the process before the panel:

One of the Justice Department's lawyers was heard saying to another, "We've got to get rid of that judge."

Judge Bason also stated that in May 1988, a news reporter—who allegedly had excellent contacts and sources in the Department—suggested to him that the Department could have procured his removal from the bench by the following means:

"The district judge chairperson of the Merit Selection Panel [Judge Norma Johnson] could have been approached privately and informally by one of her old and trusted friends from her days in the Justice Department. He could have told her that I was mentally unbalanced, as evidenced by my unusually forceful 'anti-government' opinions. Her persuasive powers coupled with the fact that other members of the Panel or their law firms might appear before her as litigating attorneys could cause them to vote with her."³²⁶

This reporter also told Bason that a high level Department official had boasted to him that Bason's removal was because of his INSLAW rulings. Judge Bason added that there is every reason to believe that Department officials would not hesitate to do whatever was necessary and possible to remove from office the judge who first exposed their wrongdoing, and that he would not have lost his job as bankruptcy judge but for his rulings in the INSLAW case.³²⁷

The committee could not substantiate Judge Bason's allegations. If the Department of Justice had influence over the process, it was subtle, to say the least. The judges who provided interviews to the committee investigators all agreed that they had little firsthand knowledge of the experience or performance of the candidates, including the incumbent judge. As a result, the members of the Council had to rely on the findings of the Merit Selection Panel (MSP). The MSP's findings were provided to the Council by Judge Norma Johnson, whose oral presentation played a large role in the selection. The other members of the MSP said that Judge Johnson firmly ran the MSP in these matters and that they relied on her judgment.³²⁸ Judge Bason asserts that Judge Johnson was easily accessible to the Department because she had previously worked with Stuart Schiffer, the Department of Justice official who led the

³²⁵ House Judiciary Committee hearing, December 5, 1990, Serial No. 114, pp. 52-55.

³²⁶ Ibid., p. 55.

³²⁷ Ibid.

³²⁸ Interview of Jerome Barron, December 4, 1989 (on file with committee).

...to have Judge Bason removed from the INSLAW case.³²⁹ The committee has no information that Judge Johnson talked to Mr. Schiffer about INSLAW, Judge Bason or the bankruptcy judge selection process.

A. CONFIDENTIAL MEMORANDUM

During the committee's investigation, one of the judges provided an apparently unofficial document that had been given to several Appeals Court judges when Judge Bason requested that the decision of the Circuit Court regarding his nonreappointment be reconsidered. The document was a December 8, 1987, "confidential memorandum" to Judge Johnson. The memorandum was unsigned (though the judge who provided the document and a member of the MSP identified the author of the memorandum as another member of the MSP, that individual denied that he had written the memorandum) and was marked at the top "read and destroy." The memorandum states that "its purpose is to 'help' elucidate in particular our reasoning in ranking the candidates as we did."³³⁰

The memorandum describes each of the four final candidates for the position of bankruptcy judge. What is striking about the memorandum is that the description of each candidate except Judge Bason begins with positive commentary about the individual. The section describing Judge Bason begins "I could not conclude that Judge Bason was incompetent." Other phrases used to describe Judge Bason include "he is inclined to make mountains out of molehills," "Judge Bason seems to have developed a pronounced and unrelenting reputation for favoring debtors," and finally, "Judge Bason evidenced no inclination to come to grips personally with the management challenge posed by the terrible shortcomings of the Office of the Clerk of our Bankruptcy Court."³³¹

The written report of the MSP, which was very brief (consisting of less than 2 pages and dated November 24, 1987), did not include any of the observations included in the confidential memorandum.³³² The Judicial Council met on December 15, 1987. The unofficial confidential memorandum to Judge Johnson was dated on December 8, 1987. When the committee interviewed several of the members of the MSP and the Council, they were shown a copy of the memorandum but did not recognize it. When asked why the memorandum was not destroyed as it indicated on the top of the document, the judge who provided the committee with the memorandum stated that it was an important document and that it would be improper to destroy it.

B. CONDITION OF THE CLERK'S OFFICE UNDER JUDGE BASON

According to Judge Robinson, Judge George Bason inherited a mess (administratively) in the clerk's office when he took over for former Judge Roger Whalen. However, several of the judges inter-

³²⁹In a committee review conducted on July 22, 1992, Judge Bason then pointed out that Judge Tim Murphy worked with Judge Johnson at the D.C. Superior Court from 1970 to 1980. Judge Murphy left the bench on April 15, 1985, and worked for Mr. Brewer as his Assistant Director on the Justice Department's PRCMIS implementation.

³³⁰Confidential memorandum to Judge Johnson, December 8, 1987, p. 1.

³³¹*Ibid.*, p. 2.

³³²Report of the Merit Selection Panel, November 24, 1987.

viewed believed Judge Bason was responsible for the deficiencies in the Bankruptcy Court.³³³ Committee interviews with members of the MSP and several members of the Council echo the sentiments that Judge Bason's nonreappointment was heavily influenced by the poor administration of the clerk's office. Yet most of the district and circuit judges interviewed said that they had little or no contact with Judge Bason and were not in a position to have firsthand knowledge of the condition of his court. Nonjudicial members of the MSP said that: (1) No statistics were examined to determine the condition of the court, (2) Judge Bason was not interviewed regarding the condition of the court, and (3) neither the clerk of the Bankruptcy Court, nor any members of Judge Bason's staff were interviewed regarding the condition of the court. In fact, the determination that the administrative condition of the court was "poor" was based solely on the comments of "a couple" of lawyers, one female member of the clerk's office and two people who might have been associated with the Administrative Office of the U.S. Court who apparently were interviewed during the selection process.

Judge Bason stated that the only explanation ever offered him regarding the reason behind his failed bid for reappointment was related to inefficiency in the District of Columbia's Bankruptcy Clerk's Office. It has also been reported that Judge Bason inherited a Bankruptcy Court which was in an administrative shambles.³³⁴ By May 1986, however, Judge Robinson said Judge Bason was getting the system under control, which was reported in the Judicial Conference report for the D.C. Circuit that year. Judge Robinson also stated, in defense of Judge Bason, that "very few judges have any knowledge of how to administer a court" and once the new clerk was hired there was a vast improvement in the court's operation.³³⁵

Committee investigators interviewed Judge Bason, the current bankruptcy clerk, and the former bankruptcy clerk. None of these individuals were ever questioned during the 1987 bankruptcy judge selection process about the administration of the Bankruptcy Court. Judge Bason stated that there was no mechanism in place for Circuit or District Court judges to personally evaluate the administrative condition of the Bankruptcy Court.³³⁶ According to Judge Bason, there were no other judges, besides Judge Robinson, in the D.C. Circuit or District Courts who were in a position to personally evaluate the operation of his court.³³⁷

Considering that poor administrative controls seemed to be one of the primary reasons for Judge Bason's failed attempt at reappointment, it is unusual that neither Judge Bason nor the other individuals most responsible for the administration of the court were interviewed by the Panel. Judge Robinson made a telling comment to committee investigators when he said it is unfortunate

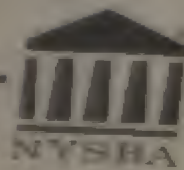
³³³House Judiciary Committee interviews of Judge Johnson, dated November 15, 1989, and Judges Wald and Mikva, dated October 16, 1989.

³³⁴Memorandum of interview of Judge Aubrey Robinson, March 9, 1992.

³³⁵*Ibid.*

³³⁶Sworn statement of George F. Bason, March 20, 1992, p. 8.

³³⁷*Ibid.*



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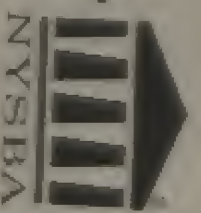
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³³³ House Judiciary Committee, "Statement of Judge Bason," 101st Congress, 1st Session, 1989, at 10.
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³³³ House Judiciary Committee interviews of Judge Johnson, dated November 15, 1989, and Judges Wald and Milke, dated October 19, 1989.

³³⁴ Memorandum of interview of Judge Aubrey Robinson, March 9, 1992.

³³⁵ *Ibid.*

³³⁶ Sworn statement of George F. Bason, March 20, 1992, p. 8.

³³⁷ *Ibid.*

Bankruptcy judges are selected by judges furthest removed from the Bankruptcy Court.³³⁸

Mr. Martin Bloom, clerk of the Bankruptcy Court, told committee investigators that "there were difficulties in many areas" when he began employment with the D.C. Circuit Bankruptcy Court in 1986. He said the "financial books and records did not balance..." and "there were some critical areas in management, both in personnel resources and equipment resources, that were lacking." According to Mr. Bloom, the relationship between Judge Bason and the previous clerk had broken down, resulting in a decline in office procedures.³³⁹

Mr. Bloom added that problems may have existed in the clerk's office "because the office was not managed efficiently or effectively" due to a lack of management capabilities and a lack of staff. When asked if the Bankruptcy Court judge was responsible for this lack of management capabilities he responded that "I can only relate to the responsibilities in the clerk's office. In no way or in any way will I look towards the judge," implying that the office had not been managed properly by the previous clerk.³⁴⁰ He added that when he reported to the court "it seemed that no one... had any understanding of closing [cases]."³⁴¹ Mr. Bloom stated, however, that by "the latter part of 1987, administratively, I think the court was up to par."³⁴² Mr. Bloom further stated that Judge Bason took an active role in providing whatever assistance he could in improving the administrative condition of the court.

C. DEPARTMENT'S ATTEMPTS TO HAVE BASON REMOVED FROM INSLAW CASE FAIL

Internal Department of Justice documents indicate that Justice officials were concerned about Judge Bason's handling of the INSLAW case very early in the litigation. They believed that the judge was not sympathetic to the Department's position and that he tended to believe INSLAW's assertions. Those concerns increased throughout the litigation to the point where, by the summer of 1987, the Department was actively seeking ways to remove Judge Bason from the case.

Richard Willard, the Assistant Attorney General of the Civil Division, in a June 1987 letter to Deputy Attorney General Arnold Burns, wrote that "Judge Bason's conduct in this case was so extraordinary that it warranted reassignment to another judge."³⁴³

The Department believed that Judge Bason disregarded the sworn statements of Department witnesses. The Department also believed that Judge Bason made lengthy observations regarding

³³⁸ Memorandum of Interview of Judge Aubrey Robinson, March 9, 1992 (on file with the committee).

³³⁹ Sworn statement of Martin Bloom, March 4, 1992, p. 4.

³⁴⁰ *Ibid.*, p. 11.

³⁴¹ *Ibid.*, p. 20.

³⁴² *Ibid.*, p. 5.

³⁴³ Memorandum from Richard K. Willard, Assistant Attorney General, Civil Division to Arnold Burns, Deputy Attorney General, entitled: "Judge Bason's Adverse Decision in INSLAW," June 19, 1987.

Apparently Department officials attempted to discredit Judge Bason by questioning his judgment and judicial temperament. In his sworn statement to the committee, former Attorney General Edwin Meese III said by his staff that Judge Bason was "off his rocker." Sworn statement of Edwin Meese III, July 12, 1990, p. 45.

the credibility of its witnesses and that Judge Bason's uniformly negative conclusions were based on inferences not supported by the record.³⁴⁴

Mr. Burns asked the Civil Division to "consider initiatives for achieving a more favorable disposition of this matter."³⁴⁵ In re- sponse to this Stuart Schiffer, the Deputy Assistant Attorney General of the Civil Division, asked Michael Hertz, Director, Commercial Litigation Branch, Civil Division, to investigate the possibility of having Judge Bason disqualified from the INSLAW case on the grounds of bias.³⁴⁶ The Department hoped to challenge the judge's findings of fact by claiming them to be unsupported by the evidence and reflecting a justification to reach a preordained conclusion. This position was founded primarily on the Department's observations that some of Judge Bason's findings of fact were "rambling and based on deductions that are both strained and have flimsy support."³⁴⁷

Mr. Hertz informed Mr. Schiffer that the facts simply did not support a legally sufficient case of bias to disqualify Judge Bason from the remainder of the INSLAW case. Mr. Hertz also stated that he was "fairly confident" that any motion to dismiss Judge Bason would not succeed and the denial of any such motion could not be successfully challenged on appeal. He cited the following reasons: (1) The Department had no evidence that what they viewed as "Judge Bason's incredible factual conclusions or alleged bias," actually stemmed from an extrajudicial source, as the case law required; (2) the research revealed that adverse factual findings and inferences against the Government are insufficient to support a claim of bias; and (3) even adverse credibility rulings about some of the Government's witnesses in the prior phase of the INSLAW proceedings were not on their own sufficient to disqualify Judge Bason from the remainder of the proceedings.³⁴⁸

Mr. Hertz advised that attempting to demonstrate bias by Judge Bason could adversely affect any future appeal by the Department on the Findings of Fact. He also advised Mr. Schiffer that as much as the Department may disagree with Judge Bason's findings:

...they are not mere conclusory statements. Instead they reflect a relatively detailed judicial analysis of the evidence, including reasons for believing certain witnesses and disbelieving others, as well as consideration of what inferences might or might not be drawn from the evidence.³⁴⁹

During August 1987, Assistant Attorney General Willard reported to Mr. Burns that the Department:

³⁴⁴ *Ibid.*

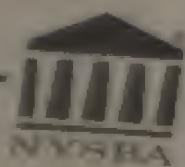
³⁴⁵ Memorandum from Stuart Schiffer, Deputy Assistant Attorney General, Civil Division to Richard K. Willard, Assistant Attorney General, Civil Division, entitled: "INSLAW," July 7, 1987.

³⁴⁶ Memorandum from Michael F. Hertz, Director of the Commercial Litigation Branch, Department of Justice, to Stuart E. Schiffer, Deputy Assistant Attorney General, Civil Division, Department of Justice, entitled: "Feasibility of Motion to Disqualify the Judge in INSLAW," July 6, 1987.

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*



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developed a good trial record; however, there is virtually no reason for optimism about the judge's ruling. Even though our witnesses performed admirably and we believe we clearly have the better case, Judge Bason made it apparent in a number of ways that he is not favorably disposed to our position.³⁵⁰

On September 28, 1987, Judge Bason removed any doubt when he ruled that the Department violated the automatic stay by using "trickery, fraud and deceit" to steal INSLAW's proprietary computer software.

On October 29, 1987, Mr. Schiffer wrote in a memorandum to the Chief of the Civil Division that:

Bason has scheduled the next [INSLAW] trial for February 2 [1988]. Coincidentally, it has been my understanding that February 1 [1988] is the date on which he [Bason] will either be reappointed or replaced.³⁵¹

Judge Bason learned from Chief Judge Patricia Wald, U.S. Court of Appeals, that he would not be reappointed to the bankruptcy bench on December 28, 1987.³⁵²

On January 19, 1988, the Department filed a motion that Judge Bason recuse himself from further participation in the case, citing that he was biased against the Department. This motion was filed even though Michael Hertz had previously advised against such a move. Following a hearing on January 22, 1988, the Bankruptcy Court denied the Department's motion. On January 25, 1988, the Department argued a motion before Chief Judge of the District Court Aubrey Robinson for a writ of mandamus directing Judge Bason to recuse himself. Chief Judge Robinson denied the Department's writ ruling:

I can't see anything in this record that measures up to the standards that would be applicable to force another judge to take over this case. There isn't any doubt in my mind, for example, that the Declaration filed [by the Justice Department] in support of the original motion is inadequate.³⁵³

The Department again raised the issue of Judge Bason's recusal in its appeal to the District Court. District Court Judge William Bryant upheld the two previous court rulings stating:

This court like the courts before it can find no basis in fact to support a motion for recusal.³⁵⁴

³⁵⁰Memorandum from Richard K. Willard, Assistant Attorney General, Civil Division to Arnold L. Borne, Deputy Attorney General, entitled "INSLAW, Inc. v. Department of Justice," undated.

³⁵¹Memorandum from Stuart Schiffer, Deputy Assistant Attorney General, Civil Division to Richard Willard, Assistant Attorney General, Civil Division, entitled "INSLAW," October 29, 1987.

³⁵²Memorandum from Stuart Schiffer, Deputy Assistant Attorney General, Civil Division to Arnold Borne, Deputy Attorney General, entitled "Recent Developments in INSLAW v. DOJ," February 12, 1988.

³⁵³U.S. v. INSLAW, Inc., Advisory Proceeding 86-0009, opinion of Judge William Bryant, See p. 48a.

³⁵⁴Id., see also.

IX. CONCLUSION

Based on the committee's investigation and two separate court rulings, it is clear that high level Department of Justice officials deliberately ignored INSLAW's proprietary rights in the enhanced version of PROMIS and misappropriated this software for use at locations not covered under contract with the company. Justice then proceeded to challenge INSLAW's claims in court even though it knew that these claims were valid and that the Department would most likely lose in court on this issue. After almost 7 years of litigation and \$1 million in cost, the Department is still denying its culpability in this matter. Instead of conducting an investigation into INSLAW's claims that criminal wrongdoing by high level Government officials had occurred, Attorney Generals Meese and Thornburgh blocked or restricted congressional inquiries into the matter, ignored the findings of two courts and refused to ask for the appointment of an independent counsel. These actions were taken in the face of a growing body of evidence that serious wrongdoing had occurred which reached to the highest levels of the Department. The evidence received by the committee during its investigation clearly raises serious concerns about the possibility that a high level conspiracy against INSLAW did exist and that great efforts have been expended by the Department to block any outside investigation into the matter.

Based on the evidence presented in this report, the committee believes that extraordinary steps are required to resolve the INSLAW issue. The Attorney General should take immediate steps to remunerate INSLAW for the harm the Department has egregiously caused the company. The amount determined should include all reasonable legal expenses and other costs to the Hamiltons not directly related to the contract but caused by the actions taken by the Department to harm the company or its employees. To avoid further retaliation against the company, the Attorney General should prohibit Department personnel who participated in any way in the litigation of the INSLAW matter from further involvement in this case. In the event that the Attorney General does not move expeditiously to remunerate INSLAW, then Congress should move quickly under the congressional reference provisions of the Court of Claims Act to initiate a review of this matter by that court.

Finally, the committee believes that the only way the INSLAW allegations can be adequately and fully investigated is by the appointment of an independent counsel. The committee is aware that on November 13, 1991, newly confirmed Attorney General Barr finally appointed Nicholas Bua, a retired Federal judge from Chicago, as his special counsel to investigate and advise him on the INSLAW controversy. However, at that time the Attorney General had not empowered Judge Bua to subpoena witnesses, convene a grand jury or compel the Department to produce key documents.

INSLAW officials have voiced concerns that Judge Bua, lacking independent counsel status, would not be able to entice Department employees who were knowledgeable of the INSLAW matter to come forward and assist Judge Bua in bringing this matter to closure. Consequently, they are concerned that Judge Bua will not be

able to get to the bottom of the matter, and they believe his investigation will end up being subverted by the Department.

The inability to subpoena and/or to convene a grand jury was apparently of concern to Judge Bua and, after a meeting on January 28, 1992, the Attorney General granted Judge Bua broad investigative authority which included the power to subpoena witnesses and to convene special grand juries. However because of the actions by the Department regarding potential whistleblowers such as Anthony Pasciuto, it is very likely witnesses will still feel intimidated by the Department. This problem was present throughout the committee's investigation and remains a potential problem today.

Without independent counsel status, Judge Bua remains an employee of the Department of Justice. The image problem is illustrated in a recent interview with Roger M. Cooper, Deputy Assistant Attorney General for Administration. In an interview with the Government Computer News, Mr. Cooper stated that:

The judge (Bua) will do as the attorney general wants him to do, and that's fine. I think all of us in the department would like to get it [the INSLAW matter] behind us. It's sort of an albatross.

Mr. Cooper may have meant that Attorney General Barr wants Judge Bua to conduct a thorough investigation. The committee has no reason to doubt the commitment of Judge Bua or Attorney General Barr to do a thorough investigation of this matter—the problem rests with the fact that, as long as the investigation of wrongdoing by former and current high level Justice officials remains under the control of the Department, there will always be serious doubt about the objectivity and thoroughness of the work.

This matter has caused great harm to several individuals involved and has severely undermined the Department's credibility and reputation. Congress and the executive branch must take immediate and forceful steps to restore the public confidence and faith in our system of justice which has been severely eroded by this painful and unfortunate affair. As such, the independent counsel should be appointed with full and broad powers to investigate all matters related to the allegations of wrongdoing in the INSLAW matter, including Mr. Casolaro's death and its possible link to individuals associated with organized crime.

X. FINDINGS

1. The Department, in an attempt to implement a standardized case management system, ignored advice from vendors—including INSLAW—that PROMIS should not be adapted to word processing equipment. As predicted, problems arose with adapting PROMIS to word processing equipment. The Department immediately set out to terminate that portion of the contract and blamed INSLAW for its failure.

2. The Department exhibited extremely poor judgment by assigning C. Madison Brewer to manage the PROMIS implementation contract. Mr. Brewer had been asked to leave his position as general counsel of INSLAW under strained relations with INSLAW's owner, Mr. William Hamilton. INSLAW's problems with the Department, which started almost immediately after the award of the

contract in March 1982, were generated in large part by Mr. Brewer, with the support and direction of high level Department officials. The potential conflict of interest in the hiring of Mr. Brewer was not considered by Department officials. However, Mr. Brewer's past strained relationship with Mr. Hamilton, and the fact that he lacked experience in ADP management and understanding of Federal procurement laws, raises serious questions about why he was selected as the PROMIS project manager.

3. Mr. Brewer's attitude toward INSLAW, combined with Mr. Videnieks' harsh contract philosophy, led to the rapid deterioration of relations between the Department and INSLAW. Any semblance of fairness by key Department officials toward INSLAW quickly evaporated when Mr. Hamilton attempted to protect his companies' proprietary rights to a privately funded enhanced version of the PROMIS software. In a highly unusual move, Mr. Brewer recommended just 1 month after the contract was signed that INSLAW be terminated for convenience of the Government even though INSLAW was performing under the contract. From that point forward there is no indication that Mr. Brewer or Mr. Videnieks ever deviated from their plan to harm INSLAW. The actions taken by Messrs. Brewer and Videnieks were done with the full knowledge and support of high level Department officials.

4. Peter Videnieks, the Department's contracting officer, negotiated Modification 12 of the contract which resulted in INSLAW agreeing to provide its proprietary Enhanced PROMIS software for the Department's use. This negotiation was conducted in bad faith because Justice later refused to recognize INSLAW's rights to privately financed PROMIS enhancements. Mr. Videnieks and Mr. Brewer, supported by Deputy Attorney General Jensen and other high level officials, unilaterally concluded that the Department was not bound by the property laws that applied to privately developed and financed software.

5. Thereafter, the Department ignored INSLAW's data rights to its enhanced version of its PROMIS software and misused its prosecutorial and litigative resources to legitimize and coverup its misdeeds. This resulted in extremely protracted litigation and an immense waste of resources both for the Government and INSLAW. These actions were taken even though the Department had already determined that INSLAW's claim was probably justified and that the Department would lose in court. In fact, Deputy Attorney General Burns acknowledged this fact to OPR investigators.

6. Department of Justice documents show that a "public domain" version of the PROMIS software was sent to domestic and international entities including Israel. Given the Department's position regarding its ownership of all versions of PROMIS, questions remain whether INSLAW's Enhanced PROMIS was distributed by Department officials to numerous sources outside the Department, including foreign governments.

7. Several witnesses, including former Attorney General Elliot Richardson, have provided testimony, sworn statements or affidavits linking high level Department officials to a conspiracy to steal INSLAW's PROMIS software and secretly transfer PROMIS to Dr. Brian. According to these witnesses, the PROMIS software was subsequently converted for use by domestic and foreign intelliger



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services. This testimony was provided by individuals who knew that the Justice Department would be inclined to prosecute them for perjury if they lied under oath. No such prosecutions have occurred.

8. Justice had made little effort to resolve conflicting and possibly perjurious sworn statements by key departmental witnesses about the alleged attempt by high level Department officials to liquidate INSLAW and steal its software. It is very possible that Judge Blackshear may have perjured himself and even today his explanations for his recantation of his sworn statement provided to INSLAW are highly suspicious. The investigation of this matter by the Department's Office of Professional Responsibility was superficial.

9. The Department's response to INSLAW's requests for investigations by an independent counsel and the Public Integrity Section was cursory and incomplete.

10. The reviews of the INSLAW matter by Congress were hampered by Department tactics designed to conceal many significant documents and otherwise interfere with an independent review. The Department actions appear to have been motivated more by an intense desire to defend itself from INSLAW's charges of misconduct rather than investigating possible violations of the law.

11. Justice officials have asserted that, as a result of the recent ruling by the Appeals Court and the refusal of the Supreme Court to hear INSLAW's appeal, the Findings and Conclusions of Bankruptcy Judge George Bason and senior Judge William Bryant of the District Court are no longer relevant. The Appeals Court decision, in fact, did not dispute the Bankruptcy Court's ruling that the Department "stole... through trickery, fraud and deceit" INSLAW's PROMIS software. Its decision was based primarily on the narrow question of whether the Bankruptcy Court had jurisdiction; the Appeals Court ruled that it did not. This decision in no way vindicates the Department nor should it be used to insulate Justice from the criticism it deserves over the mishandling of the INSLAW contract.

12. The Justice Department continues to improperly use INSLAW's proprietary software in blatant disregard of the findings of two courts and well established property law. This fact coupled with the general lack of fairness exhibited by Justice officials throughout this affair is unbecoming of the agency entrusted with enforcing our Nation's laws.

13. Further investigation into the circumstances surrounding Daniel Casolaro's death is needed.

14. The following criminal statutes may have been violated by certain high level Justice officials and private individuals:

- 18 U.S.C. § 371—Conspiracy to commit an offense.
- 18 U.S.C. § 654—Officer or employee of the United States converting the property of another.
- 18 U.S.C. § 1341—Fraud.
- 18 U.S.C. § 1343—Wire fraud.
- 18 U.S.C. § 1505—Obstruction of proceedings before departments, agencies and committees.
- 18 U.S.C. § 1512—Tampering with a witness.
- 18 U.S.C. § 1513—Retaliation against a witness.
- 18 U.S.C. § 1621—Perjury.

18 U.S.C. § 1951—Interference with commerce by threats or violence (RICO).

18 U.S.C. § 1961 et seq.—Racketeer Influenced and Corrupt Organizations.

18 U.S.C. § 2314—Transportation of stolen goods, securities, moneys.

18 U.S.C. § 2315—Receiving stolen goods.

15. Several key documents subpoenaed by the committee on July 25, 1991, were reported missing or lost by the Department. While Justice officials have indicated that this involves only a limited number of documents, it was impossible to ascertain how many documents or files were missing because the Department did not have a complete index of the INSLAW materials. The Department failed to conduct a formal investigation to determine whether the subpoenaed documents were stolen or illegally destroyed.

XI. RECOMMENDATIONS

1. The committee recommends that Attorney General Barr immediately settle INSLAW's claims in a fair and equitable manner.

These payments should account for the Department's continued unauthorized use of INSLAW's Enhanced PROMIS and other costs attributed to INSLAW's ongoing attempt to obtain a just settlement for its struggle with the Department, including all reasonable attorneys' fees. If there continue to be efforts to delay a fair and equitable result, the committee should determine whether legislation is required to authorize a claim by INSLAW against the United States, pursuant to 28 U.S.C. § 1492.

2. The Attorney General should require that any person in the Department that participated in any way in the litigation of the INSLAW matter be excluded from further involvement in this case, with the exception of supplying information, as needed, to support future investigations by a independent counsel or litigation, as appropriate.

3. The committee strongly recommends that the Department appoint an independent counsel to conduct a full, open investigation of the INSLAW allegations of a high level conspiracy within the Department to steal Enhanced PROMIS software to benefit friends and associates of former Attorney General Meese, including Dr. Earl Brian, as discussed in this report. Among other matters, the investigation should also:

Ascertain whether there was a strategy by former Attorneys General and other Department officials to obstruct this and other investigations through employee harassment and denial of access to Department records.

Investigate Mr. Casolaro's death.

Determine whether current and former Justice Department officials and others involved in the INSLAW affair resorted to perjury and obstruction in order to coverup their misdeeds.

Determine whether the documents subpoenaed by the Committee and reported missing by the Department were stolen or illegally destroyed.

Determine if private sector individuals participated in (1) the alleged conspiracy to steal INSLAW's PROMIS software and distribute it to various locations domestically and overseas

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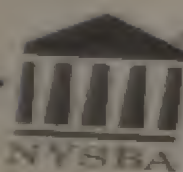
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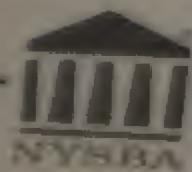
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and (2) the alleged coverup of this conspiracy through perjury and obstruction.

Determine if other criminal violations occurred involving:

- 18 U.S.C. § 371—Conspiracy to commit an offense.
- 18 U.S.C. § 654—Officer or employee of the United States converting the property of another.
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We are unable to support this Investigative Report because it injects the Committee into judicial functions, publicizes unproven allegations, and recommends inappropriate United States Claims Court and Independent Counsel involvement. The Committee endorses findings by a bankruptcy judge in the INSLAW case without the benefit of Committee or subcommittee hearings on the contract dispute that is the focus of the litigation. The Report repeats, and thus disseminates, charges of wrongdoing that can damage reputations even though the Committee itself generally cannot arrive at conclusions on whether various alleged activities—going beyond bankruptcy judge findings—actually occurred. The Committee calls for expeditious governmental remuneration of INSLAW, although those entrusted with the enforcement of our laws in the Executive Branch are better qualified than Members of Congress to assess the utility of settling a legal controversy on terms favorable to a private litigant. A congressional reference of this matter to the Claims Court is unjustified; INSLAW has not been prevented from adjudicating its claims before an appropriate tribunal in a timely fashion, and proceedings remain pending before the Department of Transportation Board of Contract Appeals. An appointment pursuant to the Independent Counsel statute is unnecessary and potentially disruptive of a criminal investigation currently in progress. The recitation in an official Committee document of accusations of wrongdoing—in the absence of proof satisfactory to the Committee—is an unfortunate and harmful feature of the Report. This practice makes it imperative to note initially in our dissent that the Report does not reach conclusions about the truth of many allegations. The Report, for example, describes allegations of a high-level Department of Justice conspiracy involving INSLAW's software but does not purport to determine whether such a conspiracy existed. Elsewhere, the Report describes former Bankruptcy Judge George Bason, Jr.'s suggestions of Department of Justice impropriety in connection with his failure to gain reappointment, a process controlled by the Federal Judiciary. The Report points out, however, that "[t]he Committee was unable to substantiate Judge Bason's charges."

INSLAW, a computer software company, had contracted with the Department of Justice in March 1982 to supply case management software for U.S. Attorneys' offices. Contract disputes arose between INSLAW and DOJ relating to the incorporation into the software of enhancements INSLAW claimed were privately funded. Although the parties executed a contract modification in 1983 that facilitated software delivery to the Department of Justice, they never reached agreement on the identification of any non-government funded enhancements. INSLAW eventually filed for bankruptcy protection, and Bankruptcy Judge Bason concluded in an adv

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proceeding that the Department of Justice had engaged in improper conduct.

The Report expresses basic agreement with Judge Bason's view of the evidence, although Members of the Committee on the Judiciary are not in a position to conclude one way or the other whether Judge Bason's findings—hotly contested by the Department of Justice—accurately reflect what actually transpired. Members of the Committee—other than possibly the Chairman—did not participate in this long investigation conducted by Majority investigative staff with the substantial assistance of GAO detailees. The testimony the Subcommittee on Economic and Commercial Law received from a few people involved in INSLAW litigation during a December 5, 1990, hearing on access to certain INSLAW documents is no substitute for direct familiarity with the voluminous record. We cannot assess the credibility of the many government witnesses who testified in the bankruptcy court without the benefit of hearing from them ourselves.

Although the district court affirmed the bankruptcy court's order in most respects, the United States Court of Appeals for the District of Columbia concluded that the bankruptcy court lacked jurisdiction and therefore reversed the district court and directed the dismissal of INSLAW's complaint. The United States Court of Appeals for the District of Columbia—after noting that "[t]he bankruptcy and district courts here both concluded that the Department fraudulently obtained and then converted enhanced PROMIS [software] to its own use"—commented that "[s]uch conduct, if it occurred, is inexcusable." [Opinion, p. 15.] We find ourselves in the similar position of criticizing the conduct described by lower courts "if it occurred."

The Report erroneously claims that DOJ litigated the INSLAW matter "even though it knew in 1986 that it did not have a chance to win the case on merits"—and observes that "[t]his clearly raises the specter that the Department actions taken against INSLAW in this matter represent an abuse of power of shameful proportions." The only support for these sweeping statements, however, appears to be a misconstruction of a 1988 DOJ Office of Professional Responsibility interview with Deputy Attorney General Arnold Burns. In that interview, Mr. Burns recounted that "I wanted to know, as a lawyer, why we didn't make a claim against INSLAW for the royalties on the theory that we were the proprietary owners." [OPR Interview, p. 12.]

This context relating to a possible DOJ counterclaim is critical to understanding Mr. Burns' comment that DOJ lawyers were "satisfied that INSLAW could sustain the claim in court, that we had waived those rights...." Mr. Burns goes on to point out in the Office of Professional Responsibility interview that he "had concluded in good faith... that unless there was movement on their [INSLAW's] part on that [proprietary rights] issue, not having anything to do with our counterclaim then, just a question of whether they have the right to collect royalties from us, that this was not susceptible of settlement and I so advised Mr. Ratiner [INSLAW's attorney] on August 28, 1986." [OPR Interview, p. 13.] Mr. Burns apparently learned that DOJ had waived its rights to seek royalties from INSLAW (by way of a counterclaim) for making the PROMIS

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The unidentified correspondence that Mr. Burns refers to as waiving rights¹ may be a subject of some discussion in the Report itself. The Report points out that INSLAW's attorney, in a May 26, 1982, letter to Associate Deputy Attorney General Stanley E. Morris, "provided a detailed description of what the company planned to do to market the software commercially...." Mr. Morris' response can be viewed as acquiescing to sales by INSLAW to third parties.

In view of the Report's heavy reliance on its construction of a small part of a single interview with the Office of Professional Responsibility, it seems unusual that the Report cites no effort to question Mr. Burns in the course of the Committee's investigation. This omission appears particularly glaring in view of other evidence contradicting the Report's perception of how DOJ viewed the merits of its case. Justice Management Division General Counsel Janis Sposato, for example, "concluded [in 1985] that INSLAW's claim to its privately financed enhancements had no merit." [83 B.R. 89 at 154 (Bkrtcy. D. Dist. Col. 1988).] Although the Report claims that DOJ "fought two judgments that it believed were in error based on technical, legal issues rather than on the merits of the case," DOJ's appellate brief in the district court contains 65 pages devoted to arguing that various factual findings by Judge Bason are clearly erroneous.

The Report's repeated references to the Department of Justice's violation of the automatic stay are confusing in view of the ruling on this point by the United States Court of Appeals for the District of Columbia in the INSLAW litigation. Circuit Judge Williams' opinion for the Court states:

INSLAW claimed that the Department had violated the stay provision by continuing, and expanding, its use of the software program in its U.S. Attorneys' offices. The bankruptcy court found a willful violation..., and the district court affirmed on appeal.... Because we find that the automatic stay does not reach the Department's use of property in its possession under a claim of right at the time of the bankruptcy filing, even if that use may ultimately prove to violate the bankrupt's rights, we reverse. [Court of Appeals opinion, p. 3.]

The lower courts erroneously construed Bankruptcy Code Section 362 [automatic stay]—and the Report perpetuates that misconstruction in spite of the appellate decision.

Judge Bason's opinion is particularly critical of the PROMIS Project Manager in the Executive Office of U.S. Attorneys. At an earlier point in his career, C. Madison Brewer had served as gen-

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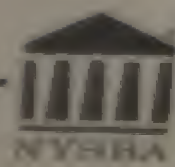
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The Report is highly critical of DOJ's response to allegations of wrongdoing relating to INSLAW. In that connection, the Report does not give appropriate credit to the Department for promptly initiating an Office of Professional Responsibility investigation following Bankruptcy Judge Bason's September 28, 1987, oral ruling in which he said "the Department of Justice took, converted, stole, Inslaw's enhanced PROMIS by trickery, fraud, and deceit..." [P. 9 of transcript.] Deputy Attorney General Arnold Burns asked OPR to "conduct a complete and thorough investigation into the allegations of bias and misconduct by various Justice Department officials against Inslaw" in an October 14, 1987, memorandum [quoted on p. 4 of OPR report]—preceding by over three months the filing of formal findings of fact and conclusions of law (on January 25, 1988), in the INSLAW case. OPR, in a detailed 91-page report, ultimately concluded that the allegations relating to a number of individuals were unsubstantiated.

After reviewing February 1988 allegations from INSLAW's President William Hamilton against high level Department of Justice officials, the Public Integrity Section of the Criminal Division concluded that "[t]he facts submitted by Hamilton are not sufficiently specific to constitute grounds to investigate whether any person covered by the Independent Counsel statute committed a crime." A Special Division of the United States Court of Appeals for the District of Columbia recounts in a per curiam opinion:

Upon receiving the INSLAW material...the Department of Justice had promptly conducted a thorough review of the allegations in conformance with the Independent Counsel Act, determined that they were insufficient to warrant a preliminary investigation under the standards of 28 U.S.C. 591(d) [footnote omitted], and accordingly closed the matter. [In Re: INSLAW, INC. at p. 4 (September 8, 1989).]

The Report describes at great length a series of allegations of wrongdoing—going beyond Judge Bason's findings in the INSLAW litigation—about which the Report does not reach conclusions. The propriety of reciting such allegations in a public report—in the absence of sufficient evidence to reach conclusions—is questionable. The release of such raw data may cause needless injury to reputations. This modus operandi is antithetical to the criminal process model in which the government does not disseminate allegations unless the evidence justifies a criminal prosecution. Some of the allegations, in addition, relate to the conduct of foreign governments—and dissemination of such material may have potential im-

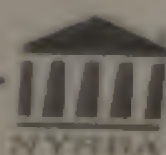
pacts on our foreign relations. There are major problems also with the credibility of some of the individuals whose allegations are aired. One individual making allegations is referred to in the Report itself as "a shady character...recently convicted on drug charges."

The Report erroneously attributes the fact that "the Committee could not reach any definitive conclusion about INSLAW's allegations of a high criminal conspiracy" in part to "the lack of cooperation from the Department." In reality, however, the Department provided the investigators access to voluminous records and facilitated extensive interviews with its employees. The Report itself delineates various "important precedents" that were established in terms of access—an acknowledgment that clearly contradicts an argument that DOJ frustrated the investigation.

The Report concludes that "[i]n the event that the Attorney General does not move expeditiously to remunerate INSLAW, then Congress should move quickly under the congressional reference provisions of the Court of Claims Act to initiate a review of this matter by that Court." INSLAW, however, still has the opportunity to appear before the Department of Transportation Board of Contract Appeals. No conduct by the government has prevented INSLAW from litigating this matter in a proper forum within the period of the statute of limitations. It clearly is not the fault of the United States that INSLAW and its attorneys decided to initiate a proceeding in a court that lacked jurisdiction.

Strong policy reasons oppose permitting litigants against the government to avoid the strictures of statutes of limitation. Designed to bar stale claims, statutes of limitation are predicated both on the evidentiary problems involved in arriving at the truth many years after events and on the potential injustice of greatly protracted legal proceedings. We simply do not have equities justifying extraordinary relief in the INSLAW matter in view of the fact that sweeping allegations remain unproven by the Report's own acknowledgment.

The Report recommends the appointment of an Independent Counsel in spite of the fact that a former federal judge [Nicholas Bua of Chicago, a President Carter judicial appointee] is actively investigating INSLAW and is subpoenaing witnesses to testify before a federal grand jury. There appears to be every indication that Judge Bua and his staff are operating with complete independence in the Department of Justice. An appointment pursuant to the Independent Counsel statute is superfluous at this point however one views the evidence—and is likely to result in unnecessary delay, expense, and duplication of effort. Judge Bua's investigation must be permitted to go forward and reach a conclusion if we hope to dispose of lingering allegations as expeditiously as possible. He has the authority to get to the bottom of this matter—and his efforts must be facilitated rather than circumvented.



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All Committee Republicans voted against the adoption of the Investigative Report.

HAMILTON FISH, JR.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
F. JAMES SENSENBRENNER, JR.
BILL MCCOLLUM.
GEORGE W. GEKAS.
HOWARD COBLE.
LAMAR S. SMITH.
CRAIG T. JAMES.
TOM CAMPBELL.
STEVEN SCHIFF.
JIM RAMSTAD.
GEORGE ALLEN.

SEPARATE DISSENTING VIEWS OF HON. TOM CAMPBELL

I concur in the dissenting views but write separately to add emphasis to three points.

First, the Majority Report places a great deal of reliance on the findings of the Bankruptcy Judge and refers to those findings as having been upheld by the Federal District Judge as well. The Majority Report accepts those findings as fact.

But our committee does not know if they are fact or not. The Bankruptcy Judge lacked jurisdiction to enter the findings that he did, as the Majority Report acknowledges. The Majority Report claims as a result that the factual findings of the Bankruptcy Judge were not cast in any doubt, since the reversal of his judgment was on jurisdictional grounds—what the Majority Report terms a legal technicality.

Legal technicalities are what you call holdings of law that devastate your case. You call them unassailably learned conclusions of law if they support your case.

The reason the U.S. Court of Appeals' finding of no jurisdiction devastates the Majority's case is that this decision renders the Bankruptcy Judge's findings of no effect. The key point is this: if the Bankruptcy Judge had jurisdiction, then the three judges of the U.S. Court of Appeals on review would have had to consider whether to uphold those findings or not. But we'll never know what they would have done with those findings.

The Department of Justice makes a strong case the findings were not substantiated by the evidence. It is wrong to say that the findings were left untouched on appeal—the U.S. Court of Appeals simply never got to them because they didn't have to. To hold that they retain any significance at all would require reviewing courts, having already found a lower court's decision to be without jurisdiction, to proceed nonetheless to review each and every finding by that court, lest someone subsequently says those findings were "left untouched" on appeal. It is axiomatic in our legal system that when a court is found to lack jurisdiction on appeal, all of its findings of fact and conclusions of law are from that moment without the slightest weight.

The Federal District Judge did uphold the findings of the Bankruptcy Judge, prior to the Court of Appeals holding they both lacked jurisdiction. The Majority Report tries to make this sound as though two completely separate decisionmakers passed on the facts and law presented. In reality, however, a federal district judge will affirm the findings of a bankruptcy judge unless they are clearly erroneous. So all that can be concluded is that one bankruptcy judge found as the Majority Report states, and one federal district judge could not call those findings clearly erroneous.

Hence, the tendency of the Majority should be resisted to intimate that the "score" is somehow 2 to 0. If anything, it might be 1+ to 0, since the Federal District Judge's finding of no clear error does not constitute a separate analysis of the facts except on the most generous of review standards.

But, once again, we have no idea how the three federal appellate court judges would have ruled. They may well have found Bankruptcy Judge's conclusions to be clearly erroneous. If they

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But, once again, we have no idea how the three federal appeals court judges would have ruled. They may well have found the Bankruptcy Judge's conclusions to be clearly erroneous. If they did,

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...all said the Farson policy, even for...
...of announcements, is based on the...
...consistency of looking only legal bonds...
...the paper runs notices of engagements...
...marriages, and divorces...
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the "score" would have been 1+ to 3, even adopting the somewhat bizarre assumption that one federal judge's opinion is entitled to the same weight as any other's, though some sit on a higher court. But we don't know, because the U.S. Court of Appeals judges found the conclusions to have been without jurisdiction. In reality, therefore, the only meaningful score is 0 to 3; since the unanimous opinion of the three reviewing judges was that the findings of fact below should have no legal effect.

Secondly, the Majority Report, and some Majority Members at the Committee Markup, suggested that the involvement of Judge Nicholas Bua made the case for an Independent Counsel stronger. It is argued that the Attorney General has, by appointing Judge Bua to conduct an outside investigation, admitted that the Department of Justice is incapable of proceeding in this matter in a fair way.

This is a dangerously erroneous position to maintain. Its logical conclusion is that the Attorney General never appoint an outsider to assist him, except through the mechanisms of the Independent Counsel statute. This would be regrettable. The Attorney General should remain free in those cases where an Independent Counsel is not appropriate nevertheless to seek a report from an outside source. To hold otherwise will discourage future Attorneys General from seeking the judgment of outsiders. There is no knife-edge between Justice Department proceeding entirely internally and the appointing of an Independent Counsel—middle courses are still available, and in this case, may well be useful.

Third, and last, much was made at the Committee Markup of statements made under oath by the Honorable Elliot Richardson, who is counsel for one of the parties in this matter.

I cannot name a public figure for whom I have higher regard than Mr. Richardson.

However, it remains that his views are not evidence. He was not a party to any of the contract negotiations at issue in this case. His conclusions are entitled only to the weight they deserve as arguments offered by counsel for a very interested party.

Cogent argument by a very respected attorney representing one side in a lawsuit is valuable to a court; it is not dispositive. That we accord it more weight than that shows how different we are, in fact, from a court.

The Inslaw matter is proceeding properly through the route of administrative remedy, with subsequent judicial review awaiting. This Committee errs in deciding factual matters in dispute on behalf of one side, errs in effectively awarding that side damages, and errs most fundamentally in taking a judicial and administrative matter into the legislative branch.

TOM CAMPBELL.

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RAPHAEL PUMPELLO CO. LTD (THAILAND)

EXECUTIVE SUMMARY

TOPIC:

PETROLEUM EXPLORATION CONCESSION
IN THAILAND

PREPARED BY:

EDMOND C. LAUSIER

FEBRUARY 1991

P E T R O L E U M I N D U S T R Y I N T H A I L A N D

HISTORY OF LEASING OFFERS
AND
CONCESSION AWARDS

GENERAL:

Prior to World War II and the few succeeding years thereafter, Thailand granted no petroleum concessions to any foreign operators. Despite pressing requests for concessions from numerous companies, the government elected to proceed slowly and more orderly into the international oil game. There was a reluctance for hasty action based on the observation of Shell Oil Company's domineering influence in Indonesia and the experience of learning by some of the Arabian countries.

In the early 1960's (3) inland tracts were awarded Union Oil Company of California and a few months later (1) tract was awarded Raphael Pumpelly, Independent Oil Operator. These (4) tracts were all located in the northeast part of the country.

In the late 1960's Thailand adopted a full set of petroleum rules and regulations that led to the offering of several offshore blocks in the Gulf of Siam. In 1967 there were some (13) bidders awarded offshore concessions in October of the same year with Gulf Oil Corporation acquiring a landward extension including and surrounding the city of Bangkok. Gulf later drilled a shallow dry hole in the vicinity of the Bangkok airport. At this time in the late 1960's, Thailand had only (2) small shallow oil fields near the Burmese border. These were Boh Ton Kham where (10) wells pumped about (17) barrels of oil per day and Mae Soon Luang with (14) pumpers and (4) flowing wells with estimated production better than (800) barrels per day. These (2) fields are within a government restricted area with little public information available and are operated by the Thailand Department of Defense.

In early 1970's and up to 1977, Thailand had no hydrocarbon production although substantial gas reserves have been discovered by Union Oil of California and Texas Pacific on their offshore lease blocks. A gas contract has been negotiated with the Thailand government and a pipeline is proposed to the City of Bangkok.

The (3) adjacent rectangular shaped concessions were awarded to Union Oil Company of California and (1) irregular shaped concession bordering the Mekong river was awarded a few months later to Raphael Pumpelly, Independent Operator.

In late 1967 the offshore lease blocks with successful bidders are indicated. Inland concessions were held only by Gulf, Union Oil, and Raphael Pumpelly.

- a) Concession acreage held by Union Oil of California and Raphael Pumpelly.
- b) Union Oil Company conducted geological and seismic surveys and released portions of their concession after amending same.
- c) Raphael Pumpelly conducted surface geological work and photogeologic studies on his concession area.
- d) Raphael Pumpelly concession expired under its own terms after being renewed for 2 years. Inaction due to Vietnam war conflict.
- e) Meridian Oil Company acquired their concession December 8, 1971 covering essentially the same area previously held by R. Pumpelly.

Note: It is understood that Union Oil Company sought the concession area obtained by Meridian Oil Company but was not permitted to do so because of their previous large holding of acreage and failure to develop same.

- f) Union Oil Company drilled their #1 Kuchinarai well to 11,010 feet total depth and abandoned as dry May 15, 1972. This well drilled continuously in red beds without any trouble but did not reach the objective Rat Buri limestone of Permian Age.

Note: It was learned that drilling was not continued to the Rat Buri objective due to limitations of the drilling rig.

- g) Union Oil Company conducted extensive seismic work over their general concession area. Strangely, they continued to conduct seismic work in the immediate vicinity while their #1 Kuchinarai well was still drilling. The United Geophysical Company who performed this work was later employed in June 1972 by Meridian Oil Company to run a seismic line on their concession.
- a) This map shows the Meridian Oil Company concession and the (2) blocks of acreage requested by Union Oil Company after drilling their dry hole.
- b) Block 1 requested by Union Oil Company includes several promising looking surface structures for oil exploration. Of paramount interest is one exceptionally large structural uplift some (50) miles in length and (30) miles wide extending partially into the Meridian Oil Company concession.

RAFAEL PUMPELLY CO., LTD.

A SUMMARY OF THE PUMPELLY CONCESSION

The project is a Concession on the Khorat Plateau in northeastern Thailand, containing approximately 12,000 square kilometers including the Ban Kaeng and the Ban Taphane Anticlines.

The aerial photograph of the cover page was taken by a U.S. flyer in 1941, during the airlift to Chaing Kai Chek in Chungking. The photograph shows a geological structure in the Savannaket sedimentary basin. The picture is looking eastward from Thailand to Laos.

The French consider the structure lying on both sides of the Mekong River to be one and the same -- The Ban Taphane Anticline. In Thailand it is called the Ban Kaeng Anticline.

Raphael Pumpelly, as an individual, held this Concession during the war years of 1962 to 1970. The Director General of the Department of Mineral Resources (DMR) recognized that Pumpelly had discovered and named the Ban Kaeng Anticline and established the geological and economic value of the Concession. As a result, the Director General urged Raphael Pumpelly Co. Ltd. ("Company") to reapply for this Concession under the existing Petroleum Laws of Thailand, in order that it may complete the original exploration program and test the Ban Kaeng Anticline. The Director General requested a specific format and asked for documentation of why the Concession had not been drilled during the Viet Nam War. The Company presented this report in August of 1989.

request for Reinstatement also includes Mr. Aground and former work on the Concession as well as qualifications of his team members. The Investor Group has access to the Request for Reinstatement plus all physical and seismic data.

No well has ever been drilled on the Concession.

The drill site has been selected for the first well.

The geological, geophysical and seismic work has been completed and paid for. Arrangements for access for the drill site have been negotiated. The location is thirty miles from the Ubon railroad. Roads to the area are not a problem. There is daily air service from Bangkok to Ubon.

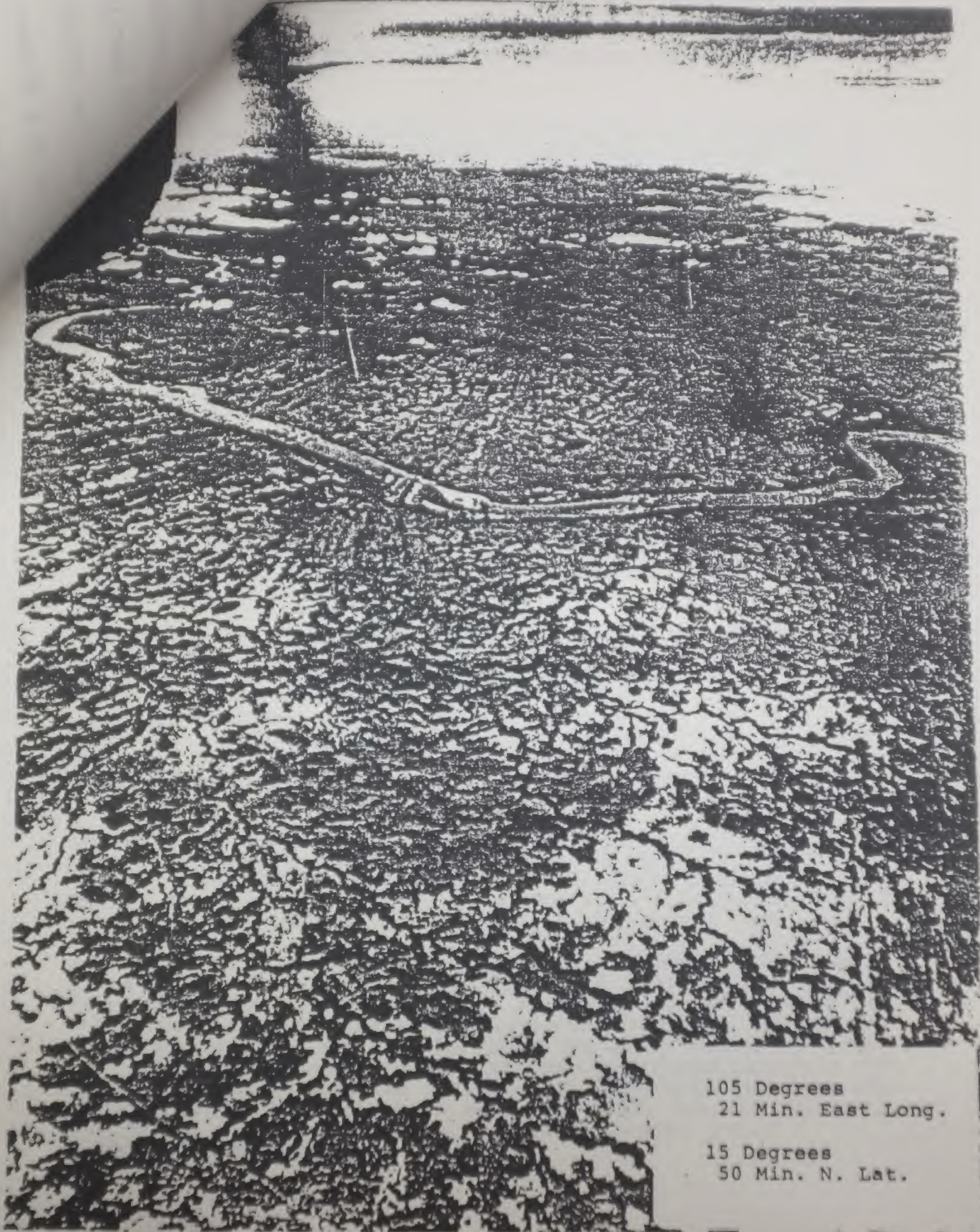
The 12,000 square kilometer Concession consists of three Blocks (5941/32, 5940/32 and 6040/32).

The Company has prepared an outline of the proposed phased exploration program indicating methods and time schedule of the operations together with the estimated expenditures. Also an A.F.E. is available for the cost of the first well.

The Company has complied with the Thai Government's requirements for the application for a Concession.

The prime drilling target is the Ban Kaeng, a closed classical anticline containing 46,000 acres of closure or 72 square miles. The pay target is the Rhat Buri Permian limestone which can be reached at approximately 8-10,000 feet. The outcropping of the Rhat Buri limestone to the northeast against the western flank of the Annamite Range in Laos shows a pay section of 700 to 800 feet.

...G EAST ACROSS MEKONG RIVER INTO
...S FROM UBON PROVINCE, THAILAND



105 Degrees
21 Min. East Long.

15 Degrees
50 Min. N. Lat.

SUMMARY OF S.E.E.M.I.'S GEOLOGICAL REPORT

1957, Societe d'Etudes & d'Exploitations Minières de Indochine (S.E.E.M.I.) decided to undertake a preliminary oil inspection survey in Laos with a view to assessing the chances for success of a thorough hydrocarbon exploration program.

This geological survey headed by J. Bolze was carried out during 1957 and 1958. Due to the existence of the Phontiou base, the existing organization of S.E.E.M.I., the technical files which it has established, the road network and the existing aerial photo and map coverage, the mission was able to complete its task in a relatively short time.

The sedimentary series extends, practically without a break, from at least the Devonian to the Senonian. It is divided into three major units whose middle formation (Uralian-Permian massive limestones several hundred meters thick) has source-rock and reservoir-rock characteristics. The overlying Indosinias series has reservoir and, in particular, cap-rock characteristics.

In the Savannakhet basin the tectonics of this series is gentle and has brought about broad and symmetric structures. Since only the crest of the Indosinias has been eroded on these structures, the possibilities for hydrocarbon exploration in these two basins are excellent.

On Page 20 of this report, under the heading of Indications of Oil, Bolze states: "Oil show has been noted some 15 kilometers south of Ban Keun - a seep along the faults which cut the flank of the Phou Khouai anticline." "Two shafts drilled into sandstones (Lower Cretaceous) appearing on both sides of the road from Muong Phine to Tchepone had oil impregnations at depth." Bolze further reports, "I saw green yellowish sandstone in a quarry 30 kilometers going west on the Seno to Thakket Road heavily impregnated with bitumen."

On Pages 20, 21 and 22 under the headings of Source Rocks and Reservoir Rocks Bolze continues, referring again to the Uralian Permian Limestone: "This large mass of black, zoogeneuous limestone, occasionally reef forming and with a high content of organic matter, has many characteristics of a source rock."

On Page 25 Bolze concludes: "The result of this survey mission shows there is a real possibility of finding oil in the Savannakhet Basin. To this must be added another reason for encouragement: the striking structural similarity between the region surveyed and the area formed by the Atlas Mountains in the Sahara and the northern border of the Sahara. Morphologically and geologically the Indosinias series is closely comparable to the intercalated Continental which serves as cover for the Paleozoic oil-bearing structures of Hassi Messaoud and Hassi R'Mel."

MINES & D'EXPLOITATIONS MINIÉRES DE L'INDOCHINE

Paris, le 20 Juin 1968

JPL/YD - 1029 -

YIP IN TSOI & CO., LTD.

P.O. Box 23

BANGKOK

(Thailand)

Dear Mr YIP,

Indeed it has been some time since I had the pleasure to see you and I hope I shall have the opportunity to meet you at the time of my next travel.

The Mr. Pumpelly Petroleum concession area in Thailand are effectively neighbouring to ours in Laos and in consequence we have the same problems for our reconnaissances.

So with great interest I shall start a connection with Mr Pumpelly when he wants to contact me.

I leave it to you to advise him.

Yours faithfully,

Le Directeur,

J. TAYON

INDO LIT

ÉTUDES & D'EXPLOITATIONS MINIÈRES DE L'INDOCHINE

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R. C. SEINE : 24 8 0000

SIÈGE SOCIAL : 23. RUE DE L'AMIRAL-D'ESTAING. PARIS (XVI^e)

ADRESSE TÉLÉGRAPHIQUE

MININDOLIT-PARIS

CODE LUGARS

TELEPH. 852.62-60

Paris, le 14th October 1969

JT/YD - 2822 -

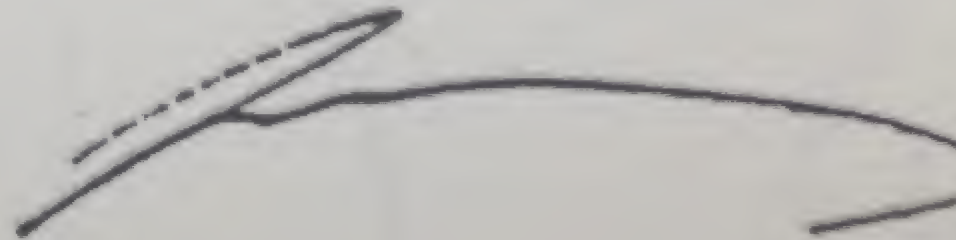
Mr. PUMPELLY
President of UNITED ASIA OIL C^o
P.O. Box 874
BANGKOK
(Thailand)

Dear Mr. PUMPELLY,

I have been very interested by your letter dated October 10th, and specially by your decision to commence drilling of a first test this coming dry season.

I planned to leave PARIS for Laos the 5th of November. Please let me know as soon as possible if you will be in BANGKOK at this time. If so, I shall stay one or two days in BANGKOK to meet you before reaching VIENTIANE. If not, I shall go directly to VIENTIANE and come back later BANGKOK when you will be there.

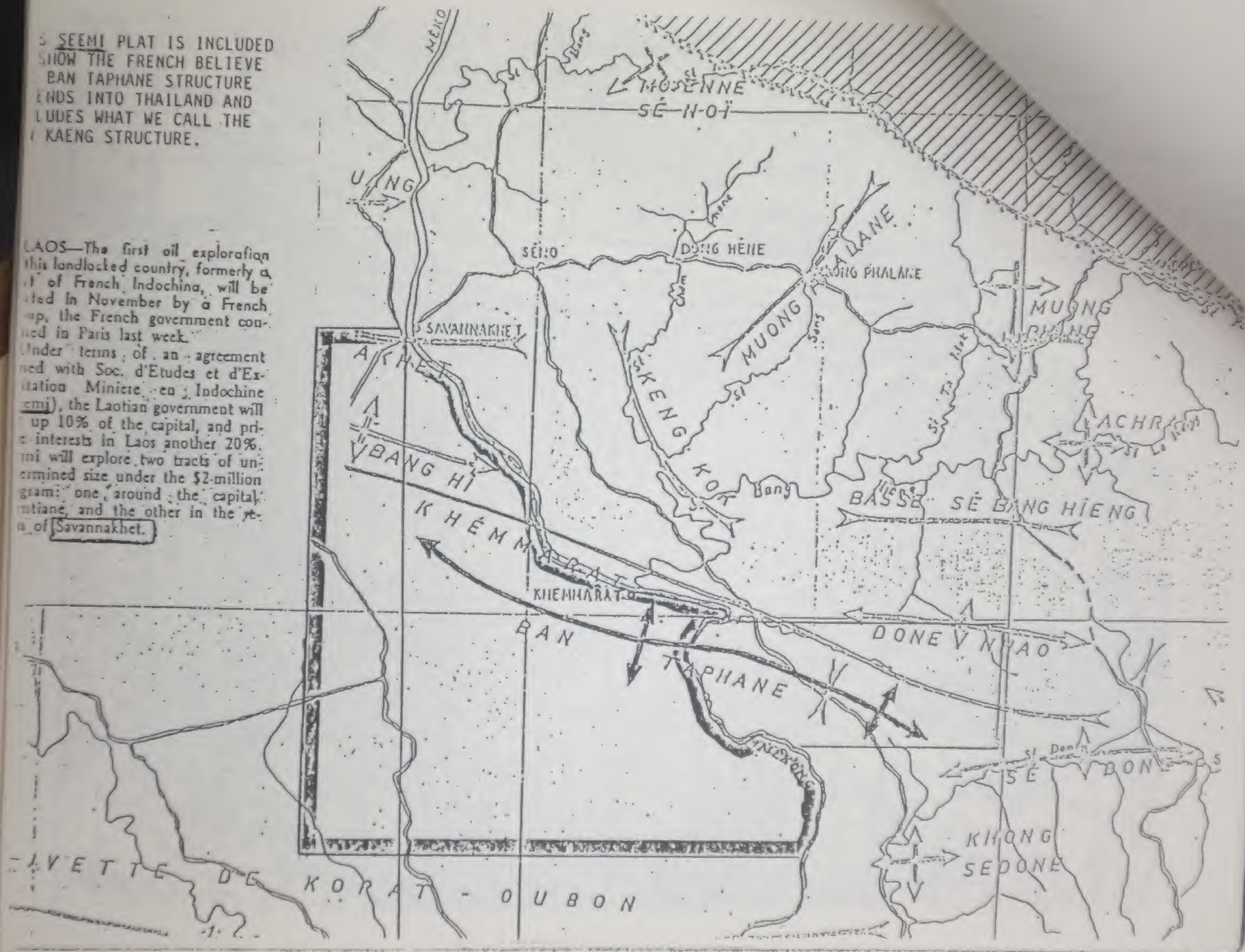
With kindest personal regards,



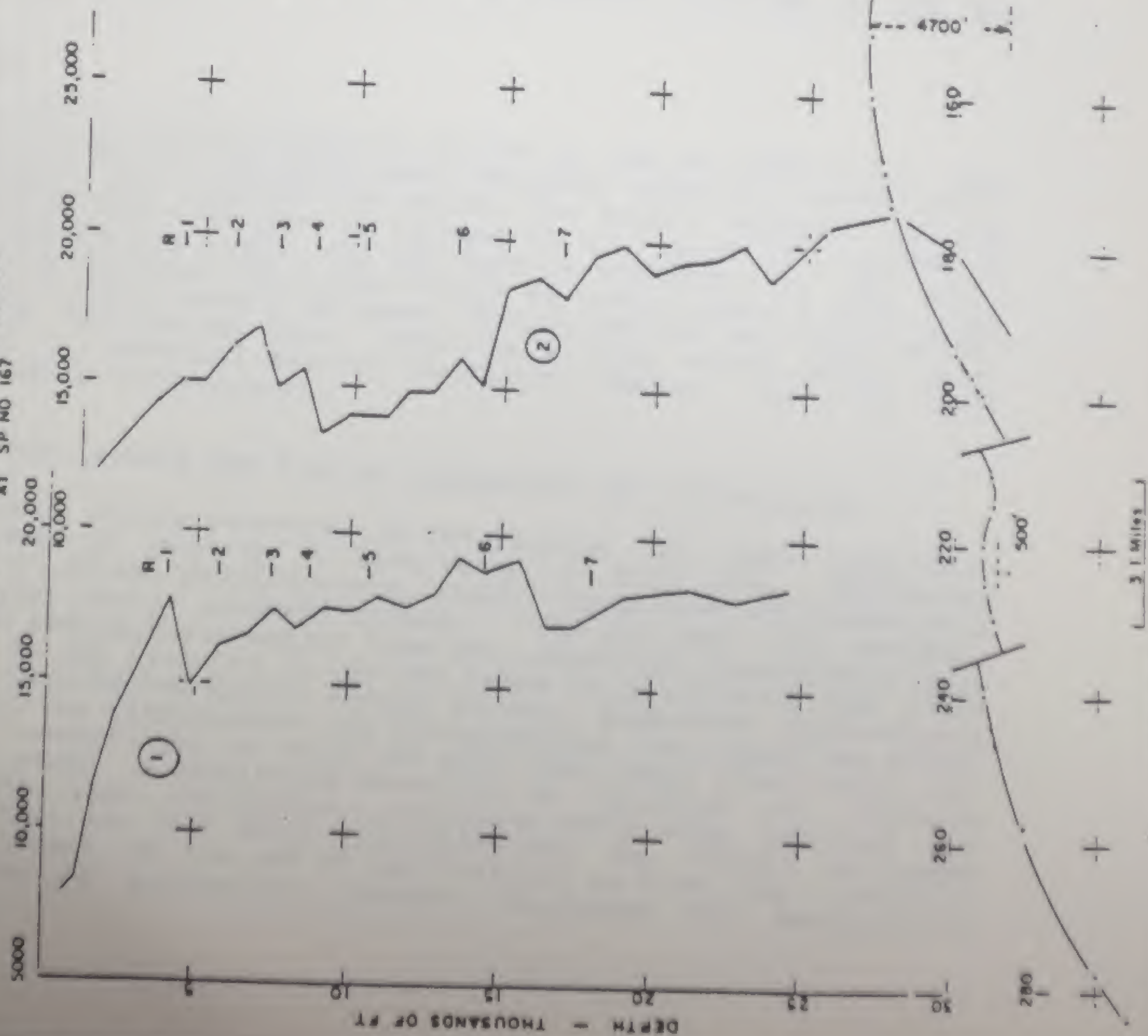
J. TANON

S SEIMI PLAT IS INCLUDED
SHOW THE FRENCH BELIEVE
BAN TAPHANE STRUCTURE
ENDS INTO THAILAND AND
LUDES WHAT WE CALL THE
KAENG STRUCTURE.

LAOS—The first oil exploration
in this landlocked country, formerly a
part of French Indochina, will be
started in November by a French
company, the French government con-
firmed in Paris last week.
(Under terms of an agreement
signed with Soc. d'Etudes et d'Ex-
ploitation Minière en Indochine
S.E.M.I.), the Laotian government will
own 10% of the capital, and pri-
vate interests in Laos another 20%.
The company will explore two tracts of un-
determined size under the \$2-million
program: one around the capital
city of Vientiane, and the other in the re-
gion of Savannakhet.



INCREMENTAL VELOCITY - FT. / SEC.
AT SP NO 167



MERIDIAN OIL CORPORATION
PETROLEUM CONCESSION - THAILAND
SEISMIC PROFILE & VELOCITY DATA
BAN KAENG ANTICLINE
KHORAT PLATEAU

Cordura Exploration Company

237 South Euclid Street
Pasadena, CA USA 91101

ore H. Willis

(818) 796-5954
Telex 18-2191

November 14, 1990

Mr. Raphael Pumpelly
550 Paseo Miramar
Pacific Palisades, CA 90272

re: Ban Kaeng Structure
Ubon Province, Thailand

Dear Mr. Pumpelly:

You have asked me to estimate the possible reserves in the Ban Kaeng structure.

VOLUME

The primary surface structure covers an area of 36000 acres with another 10000 in its south east extension (Bickel's Ban Doo Tiu). A single N-S seismic line across the saddle between the two indicates about 800 feet of closure to shot point 130, closest to the spill-point with the Ban Taphane structure to the east. Assuming 5 degree dips from saddle to crests gives a total apex to spill point closure of about 1750 ft for the Ban Kaeng and 900 ft for the Ban Doo Tiu. Thus the volumes above spill point (using a spherical section algorithm) become 7.56 and 0.67 cubic miles respectively.

RESERVOIR, SOURCE AND TIME OF GENERATION AND ACCUMULATION

The most likely reservoir is the Permian Rat Buri Limestone, described in outcrop in Laos as up to 2300 feet, thickening westerly; black, fossiliferous, highly bituminous and extensively fractured where slightly folded. The Rat Buri was probably sourced indigenously and/or from the underlying Kanchanaburi Series. In the vicinity of the Ban Kaeng it is unlikely that these rocks were buried deeply enough to have generated hydrocarbons prior to the diastrophism and peneplanation that ended the Paleozoic. Accordingly it would not have been until after being reburied under a sufficient thickness of Triassic and Jurassic sediments that hydrocarbon generation would have occurred and since the Phu Phan Hills (including the Ban Kaeng) initiated their growth at the end of the Triassic we have the favorable situation of generation, primary migration and accumulation

occurring contemporaneously with, or subsequent to, structural deformation. It is also reasonable to assume that these processes were completed during the period of greatest burial, ie. prior to the end of the Cretaceous.

POROSITY AND PERMEABILITY

The Rat Buri is described variously as massive, crystalline, dolomitized, sub-coral & zoogeneous. The impression given is that the matrix porosity is probably low, about 5%, with upward variations in areas of dolomitization or a reefal facies. When exposed during the post-Paleozoic peneplanation it would have developed a significant solution porosity in the several hundred or so feet above and within the then fresh water zone. Its brittle nature and tendency to fracture under stress would indicate added fracture porosity associated with structure and probably very high permeabilities, recoveries and individual well production rates.

FLUID CONTENT

Although I have assumed a water saturation of 20%, the fact that the source is indigenous may well indicate a lower figure.

At the Ban Kaeng the Rat Buri should be at least 2000' thick and velocity analysis of the seismic suggests the top may be encountered at about 8000'. However surface evidence indicates that at least 4000' of sediments have been eroded since the Cretaceous. Accordingly the original accumulation would have been at pressures and temperatures typical of 12000 to 14000 feet of burial. In the absence of evidence to the contrary it must be assumed this accumulation was fully saturated (ie. no gas cap and the maximum solubility of gas in oil consistent with the pressures and temperatures existing at those depths).

With the subsequent erosion of the surface sediments, reservoir pressures and temperatures would lessen, gas would come out of solution and a gas cap would form.

STRUCTURAL FILL

If the original accumulation completely filled the structure the formation of such a gas cap would have pushed an equivalent volume of oil out of the bottom of the structure across the spill point and up into the Ban Taphane structure. Similarly, if the downdip structures to the west were full, expelled oil would

spill up toward the Ban Kaeng, but because it was already full, would continue on up to the Ban Taphane. However some of the free gas released due to the pressure differential between spill point depths probably would be added to the Ban Kaeng gas cap.

If the original accumulation only filled a portion of the structure, secondary spill point migration and differential accumulation would not occur (at least until gas cap formation and expansion was sufficient to fill the structure) and all the oil and gas originally in place would be preserved in the structure.

An arbitrarily chosen third scenario assumes that the accumulation is limited to the top 100 feet of the Rat Buri in the zone where the porosity of the reservoir was enhanced to an assumed 15% by solution activity during the time of the post-Paleozoic unconformity. As with the initial (full structure) case it has been assumed that gas cap formation and expansion pushed oil under the spill point up to the Ban Taphane structure.

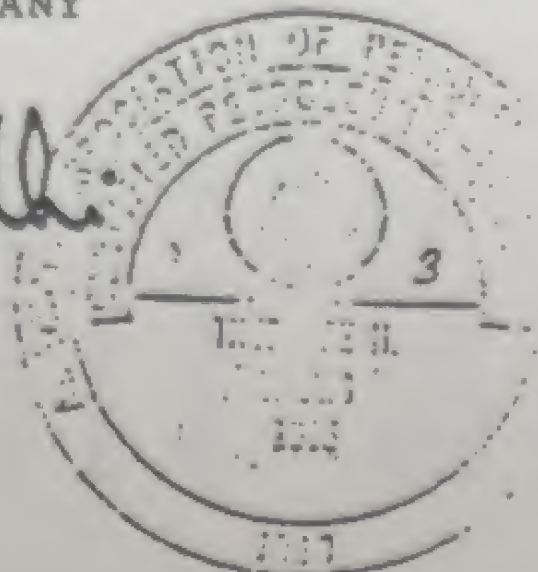
RESULTS

The results of the three scenarios are shown below. The detail of the calculations is shown on the next page.

RECOVERABLE RESERVES:	Full	1/2 Full	Unconformity
OIL - Billion Bbls.			
Ban Kaeng	4.25	2.47	1.50
Ban Doo Tiu	0.38	0.22	0.42
	----	----	----
Total	4.63	2.69	1.92
GAS - Trillion Cu. Ft.			
Ban Kaeng	9.03	4.51	3.18
Ban Doo Tiu	0.81	0.40	0.88
	----	----	----
Total	9.84	4.91	4.06

Sincerely,
CORDURA EXPLORATION COMPANY

Thurman H. Wilkins



\THW\901RPT

spill up toward the Ban Kaeng, but because it was already full, would continue on up to the Ban Taphane. However some of the free gas released due to the pressure differential between spill point depths probably would be added to the Ban Kaeng gas cap.

If the original accumulation only filled a portion of the structure, secondary spill point migration and differential accumulation would not occur (at least until gas cap formation and expansion was sufficient to fill the structure) and all the oil and gas originally in place would be preserved in the structure.

An arbitrarily chosen third scenario assumes that the accumulation is limited to the top 100 feet of the Rat Buri in the zone where the porosity of the reservoir was enhanced to an assumed 15% by solution activity during the time of the post-Paleozoic unconformity. As with the initial (full structure) case it has been assumed that gas cap formation and expansion pushed oil under the spill point up to the Ban Taphane structure.

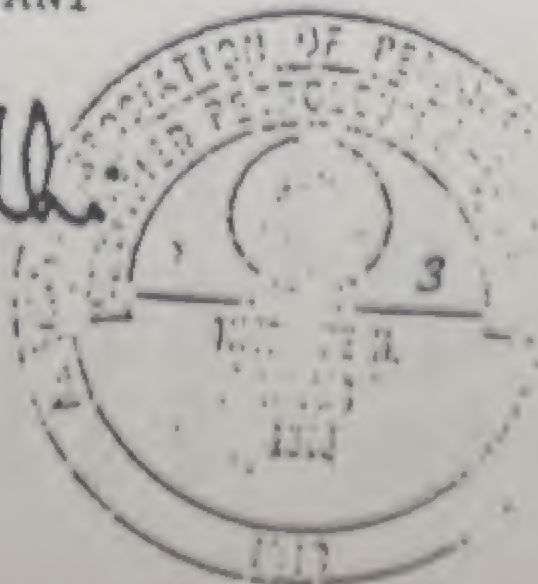
RESULTS

The results of the three scenarios are shown below. The detail of the calculations is shown on the next page.

RECOVERABLE RESERVES:	Full	1/2 Full	Unconformity
OIL - Billion Bbls.			
Ban Kaeng	4.25	2.47	1.50
Ban Doo Tiu	0.38	0.22	0.42
Total	4.63	2.69	1.92
GAS - Trillion Cu. Ft.			
Ban Kaeng	9.03	4.51	3.18
Ban Doo Tiu	0.81	0.40	0.88
Total	9.84	4.91	4.06

Sincerely,
CORDURA EXPLORATION COMPANY

Ther H. Willh



\THW\901RPT

RESERVE CALCULATIONS

APEX TO SPILL POINT

APEX
VOLUME

FT
ACRES
CU. HI

BRN KRENG
BOT

THICKNESS
36000
1.07
100
10000
.30

POROSITY
PORE SPACE

WATER SAT
HYDROCARBON

ACRE FT.
BBL5x10^6
BBL5x10^6

540000
4189
3351
150000
1164
931

DEPTH

ORIG
NOH
ORIG
NOH
ORIG
NOH
ORIG
NOH
ORIG
NOH
ORIG

TEMP
(@ 1.2 Deg F/100')

HYDROSTATIC

GAS SOLUBILITY

BBL5/ACRE FOOT

FT
DEG F
PSI
SCF/88L
12000-14000
8000-10000
215
165
5600
3877
1200
940
372

STRUCTURE IS ----->

FULL

1/2 FULL

OIL IN PLACE
GAS IN PLACE
FREE GAS

FREE GAS

PORE SPACE REQ'D

VOL OF STRUCT REQ'D

OIL IN PLACE NOH
GAS IN SOLUTION NOH

RECOVERY FACTOR

OIL SHRINKAGE FACTOR

OIL RECOVERABLE
GAS RECOVERABLE

BBL5x10^6
TCF
ACRE FT.
CU HI
BBL5x10^6
TCF

9514
11.42
.00
2.47
215292
3588202
1.06
8177
7.69

4757
5.71
.00
1.24
107646
1794101
.53
4757
4.47

3351
4.02
.00
.87
75843
505623
.15
2881
2.71

.65
.80

.65
.80

.65
.80

2474
4.51
221
.40

1498
3.18

416
.88

The future of the mountain is in the hands of the people who live in the mountains. The future of the mountain is in the hands of the people who live in the mountains.

PRELIMINARY AFE

Contractor: Raphael Pumpelly & Co. Ltd.
 Well: Baen Kaeng #1
 Location: Ubon Province, Thailand

TANGIBLE WELL EQUIPMENT	DRILLING	COMPLETION	TOTAL
Wellhead	\$3,000	\$15,000	\$18,000
Surface Casing - 20" x 1000'	25,000		25,000
Intermediate - 13 3/8" x 4000'	70,000		70,000
Production - 9 5/8" x 9000'		150,000	150,000
Liner - 7" x 3000		35,000	35,000
Casing accessories	5,000	10,000	15,000
Tubing		40,000	40,000
Misc. down-hole	1,000	5,000	6,000
Flowlines & tankage		20,000	20,000
TOTAL Tangibles	\$104,000	\$275,000	\$379,000

INTANGIBLE DRILLING COSTS			
Mobilization - contractor	\$200,000		\$200,000
Water well	3,000		3,000
Daywork - 100 days @ \$11000	1,100,000		1,100,000
Complete & Test - 30 days		330,000	330,000
Fuel @ \$800/400/day	80,000	6,000	86,000
Bits	150,000		150,000
Mud & chemicals	360,000		360,000
Cement & pumping	50,000	100,000	150,000
Formation logging	165,000	4,000	169,000
Wire line logs	200,000	50,000	250,000
Supervision	120,000	30,000	150,000
Transportation	50,000	15,000	65,000
Cleanup	5,000		5,000
Demobilization - contractor	200,000		200,000
Contingency @ 20%	536,600	107,000	643,600
TOTAL Intangibles	\$3,219,600	\$642,000	\$3,861,600
TOTAL WELL COST ESTIMATE	\$3,323,600	\$917,000	\$4,240,600

Prepared by: JAW 7/9/90 | Reviewed By: CHA 3/15/90 | Approved by: R. Pumpelly 3/13/90

RAPHAEL PUMPELLY CONCESSION BACKGROUND

Raphael Pumpelly first became interested in the Khorat plateau through a photograph taken by a U.S. flyer in 1941 of the Mekong Valley during the airlift to Chaing Kai Chek in Chungking. A friend of Raphael Pumpelly, who was involved with the airlift, years later showed Mr. Pumpelly the photograph which he subsequently purchased. Mr. Pumpelly recognized from his drilling experience in Louisiana the potential significance of this type of reversal in the Mekong River caused by the Ben Kaeng Anticline.

In February 1962 working as an Independent Oil and Gas Operator in Australia, Mr. Pumpelly acquired an option from the Melbourne based Metals Exploration N.L. on the extension to the Mount Isa Proprietary copper ore body in the Northern Territory. With the option Mr. Pumpelly received a letter of introduction to Mitsui Mining and Smelting in Tokyo to assist him in financing his diamond coring operation.

The Chairman of Metals Exploration N.L. asked Mr. Pumpelly to stop in Bangkok on his way to Tokyo.

Two of the directors of Metals Exploration N.L. were also on the board of Farmount Drillers N.L., a publicly traded company Mr. Pumpelly and Clive Bonython of Adelaide, S.A. had founded. The stopover in Bangkok was arranged for Mr. Pumpelly to investigate

the Thai Royal Department of Mines the rumored existence of a major iron deposit in the Phou Phan Range of the Khorat Plateau.

During the visit Mr. Pumpelly was referred by the Royal Department of Mines to the U.S. Operation Mission to obtain maps with English designations. The U.S. Operation Mission at this time was active in assisting Thailand build roads and bridges leading to the Mekong River opposite Vientiane, Laos.

Louis Gardner, the officer in charge of the U.S. Operating Mission had formerly headed the Bureau of Land Management in Utah where in 1961 Mr. Pumpelly had successfully drilled a wildcat under the Book Cliffs in Grand County and discovered the Agate Field.

In this first meeting, Mr. Gardner showed Mr. Pumpelly a map of the Ubon Province on the Thai-Lao border just south of Khemarat where Mr. Pumpelly recognised the same reversal in the Mekong River as in the 1941 photograph taken by his flyer friend.

Mr. Pumpelly did not mention the significance of this to Mr. Gardner, who went on to explain to him where Union Oil Company of California two weeks before had filed for exploration rights on 27,000 square miles of the Khorat Plateau.

Mr. Gardner told Mr. Pumpelly that two engineers on his project with geological backgrounds believed Union Oil Company of California had failed to file on the most valuable area: 7,455 square kilometers in the southeastern corner of the Ubon Province bordered by the Mekong River. Mr. Pumpelly observed that in this area was the only reversal of its kind in the 2,000 mile course of the Mekong River from China to the South China Sea.

Immediately after the meeting Mr. Pumpelly obtained the necessary forms from the Royal Department of Mines and ten days later mailed his application from Tokyo to explore for oil on the 7,455 square kilometers containing the Ban Kaeng Anticline.

In Tokyo Mr. Pumpelly established a long standing friendship with Dr. Chikao Nishiwaki, Managing Director of Mitsui Mining and Smelting. Dr. Nishiwaki introduced Mr. Pumpelly to an old friend of his in Bangkok, Mr. Yipintsoi. Yipintsoi and Company became Mr. Pumpelly's agents in Thailand. In 1964, Mr. Pumpelly received a concession for the 7,455 square kilometers he sought.

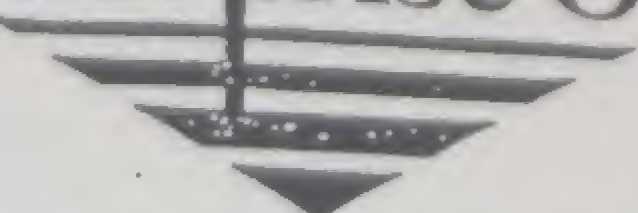
Upon being granted the concession, Mr. Pumpelly contracted General Exploration Company of California, with whom he had worked in Australia, to develop the geology on the Raphael Pumpelly Concession. The then Vice President of General Exploration of California, Ted Willis, supervised this work. Robert Bickel was called off his assignment in Burma by General Exploration of

California to map the Pumpelly Concession and write the first report on the Ban Kaeng Anticline.

The reports by Monsieur Bolze of S.E.E.M.I., Robert Bickel for Raphael Pumpelly, Watanachai Bunyakiet, Khun Songsiri and Karl H. Schmidt for Meridian Corporation, research by the Independent Sterling Little, the investigations by Petromin N.L. led by the Australian consortium headed by Fitzpatrick and Siller, the National Chinese Petroleum Company of Taiwan, the Soriano Company of Manila, the Wendell Phillips Oil Company representing the Winterschall Oil Company of West Germany and the Sultan of Oman, and Fluor Drilling Services constitute the main body of geological work done on the Raphael Pumpelly Concession.

SS RELEASE

Enterprise Oil



01-930 1212

19th September 1989

ENTERPRISE OIL SIGNS AN EXPLORATION AGREEMENT IN LAOS

Enterprise Oil, the British independent oil exploration and production company, announced today that it has signed a Production Sharing Contract with the Government of the People's Democratic Republic of Laos. The agreement gives Enterprise Oil and its partner, Compagnie Europeenne des Petroles (CEP), exclusive exploration rights over an area of some twenty thousand square kilometres covering an unexplored basin in the vicinity of Savannakhet in southern Laos. Enterprise Oil will act as Operator of the Contract.

The Enterprise/CEP partnership is the first oil company group to have signed a Production Sharing Contract with the People's Democratic Republic of Laos.

Further information:-

Dr. Myles Bowen, Exploration Director

:

Tel: 01-930-1212

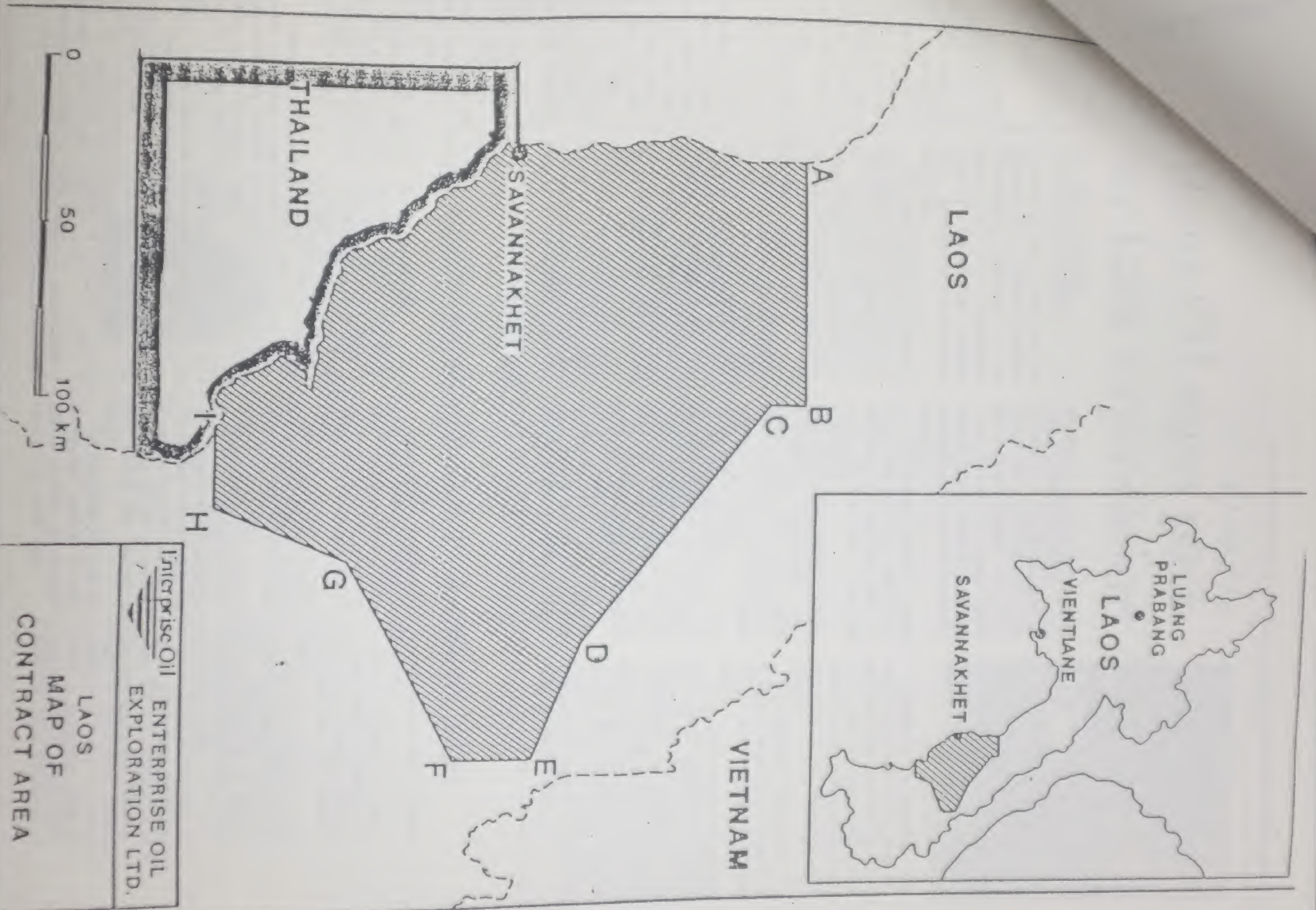
Mr. Iain Paterson, General Manager,
International Exploration

:

Tel: 01-930-1212

Map attached

Enterprise Oil plc



Enterprise Oil
EXPLORATION LTD.

LAOS
MAP OF
CONTRACT AREA

Hunt Oil signs pact for Laos exploration

By Maria Halkias

Staff Writer of The Dallas Morning News

Hunt Oil Co. is the first U.S. company to be granted a production-sharing agreement to explore for oil by the government of Laos, the Dallas-based international independent oil company said Friday.

The Laos agreement is the second announced so far this year by Ray L. Hunt, chairman of Hunt Oil Co. Last month, Hunt Oil said it was granted an oil prospecting license and corresponding production sharing agreement by the government of Guyana.

"We're much more aggressive in the international arena. But many of these prospective areas we're moving into now are areas we've been working on for a period of time and seem to be coming to fruition now," said James C. Oberwetter, Hunt Oil's spokesman.

Other new projects may be announced in 1990, he said. Hunt and Exxon Corp. are in a four-nation consortium bidding for the

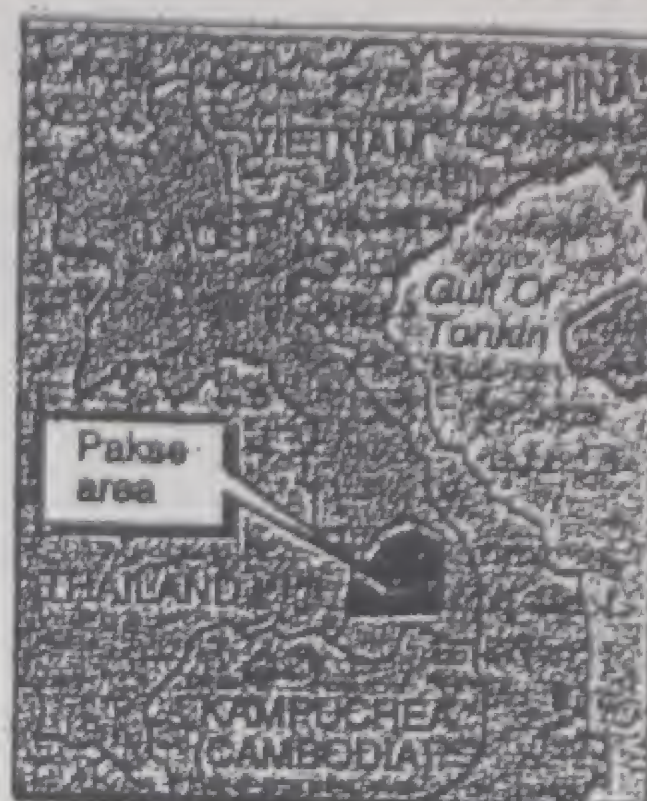
contract to explore and drill for oil in the North and South Yemen border zone. The consortium includes France's Total, two Soviet firms and Kuwait Petroleum Corp.'s Kufpec. The region has attracted much interest, and the consortium is expected to win the project.

A British and French consortium is the only other entity to be exploring for hydrocarbons in Laos, which has no oil and gas production.

Laos "fits the profile of our international exploration program," Mr. Oberwetter said. "We're looking for oil in areas where not much previous exploration has occurred."

The Laos concession is in its southern Pakse area, bordered by Thailand to the west. The agreement signed Friday provides for an initial two-year exploration term with options for four additional two-year terms.

The area offered for exploration covers about 6.4 million acres or 26,000 square kilometers.



The Dallas Morning News

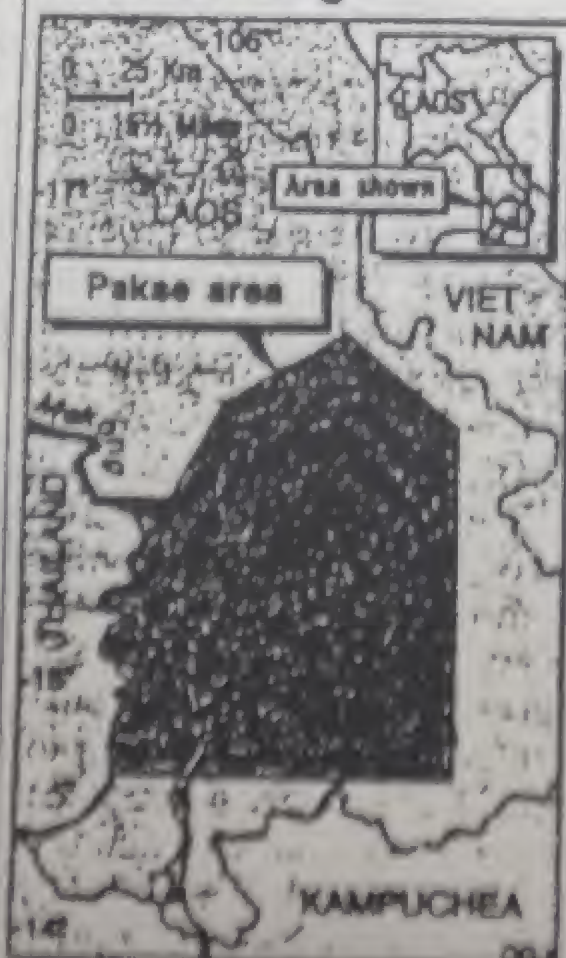
Hunt Oil's Laos subsidiary will conduct geological and geophysical studies in the first two years, with plans to acquire seismic data for at least 500 kilometers during the second two years of operations.

To maintain the contract beyond the fourth year, Laos Hunt Oil is required to drill exploratory wells.

Laos and Guyana represents the latest of several international projects for Hunt Oil, including exploration and production projects in North Yemen, the British North Sea, Chile and China. Last month, the company pulled its operations out of Jordan after a three-year search for oil near the Saudi Arabian border.

Hunt to explore block in southern Laos

Hunt acreage



The Laotian government and Laos Hunt Oil Co. have signed a production sharing contract covering 6.4 million acres in the southern part of Laos.

The agreement provides for an initial 2 year exploration term with options for four more 2 year terms.

Laos Hunt, a subsidiary of Hunt Oil Co., Dallas, will conduct geological and geophysical studies in the first 2 years of operations and acquire at least 500 line km of seismic data during the second 2 years.

The company will drill an unspecified number of wildcats to maintain the contract beyond the fourth year.

The contract was signed Feb. 23.

The Lao Ministry of Industry and Handicraft will administer the production sharing agreement for the government.

Laos has no crude oil and natural gas legislation but began negotiating contracts broadly based on its foreign investment laws (OGJ, June 26, 1989, p. 28).

Last fall Laos awarded a 70-30 partnership of Enterprise Oil plc, London, and Cie. Francaise des Petroles, Paris, a production sharing contract on about 5 million acres, a northwest offset to Hunt's contract area (OGJ, Sept. 25, 1989, Newsletter).

...the sa...
...be charg...
...custome...
...said the...
...involved are...
...Panhandle Easter...
...systems also are ch...
...penalty. Mazanec...
...penalty would am...
...about \$5/Mcf.

U.S. productive...
Judging by the first...
December, when...
demand was strong, de...
lity from the supply ar...
as expected, said K...
Mazanec said Pa...
Eastern's systems ar...
encountering proble...
producers unable to...
volumes indicated by...
ability tests.

The American Gas...
ation says the U.S. s...
gas deliverability...
(OGJ, Jan. 15, p. 2)

According to AGA...
only 316 bcf of unu...
ductive capacity ave...
the U.S. this year...
down sharply from...
last year and the...
4.572 tcf of 1983.

One thing differ...
today's market is the...
tion cushion afforde...
Order 436 contract...
Mackie.

Under old style co...
65-75% take or pay obli...
gation resulted in a 25-35%...
cushion of deliverability...
that could be called upon in times...
of peak demand.

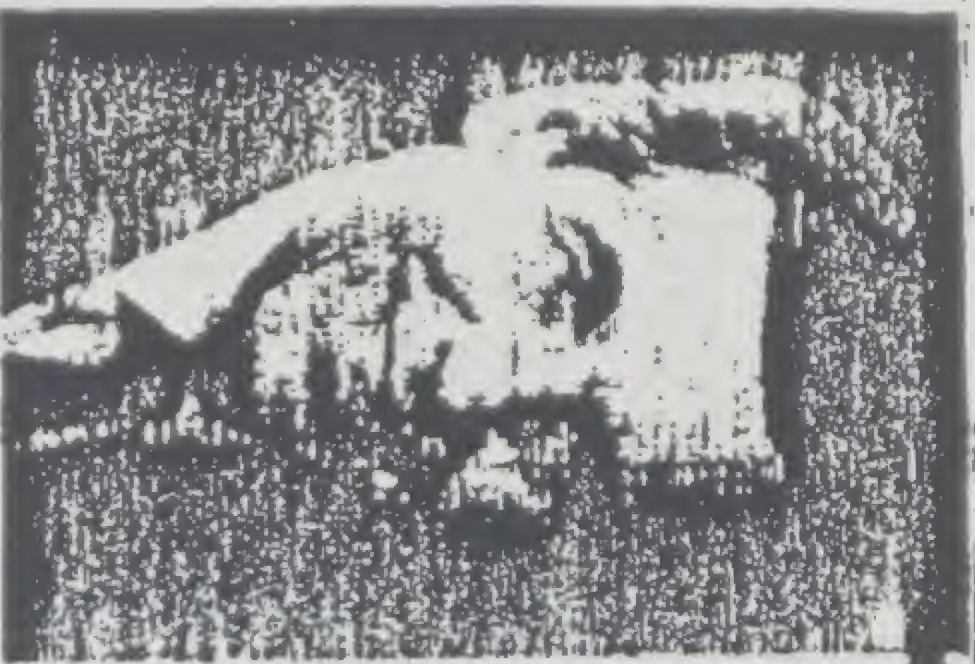
"That no longer is true,"...
said Mackie. "Producers now...
flow their gas in the 90%...
ranges. We no longer have...
the margin of deliverability...
built into the system."

Lessons to be learned...
Virtually all players in the...
U.S. gas market are involved...
in a review of their operations...
during this winter heating...
season.

ARCO's Harper said the...
flaws in open access were...
magnified, but he believes in...
dustry responded well.

The flaws he saw included...
methods of allocating firm...
transportation during curtail...
ment, managing storage, al...
locating volumes on a real

Unocal gears up for larger gas production role



by Boonsong
Kedicholsatana

The company, through its new subsidiary, Unocal Bangkok, is among 22 international oil concerns vying for rights in the current round of petroleum concession licensing.

Unocal's bid for seabed crude gases as a surprise to other oil companies which expected the company to go for additional tracts in the Gulf where it has discovered 11 commercial-size gas fields. Instead, the seabed blocks cover areas where Unocal explored unsuccessfully about two decades ago.

Kao Exploration & Production Board proved they couldn't gas in the early 1980s. Kao is scheduled to begin gas production from its Nam Phang field in the northeastern province of Khao Kao next month.

In 1971 Unocal managed to drill only one exploratory well — Kuchinarai #1 — in Kachin as part of the petroleum concession granted to the company in 1969. The permit was the first exploratory license ever issued in Thailand.

Mr. Lee said: "The well we drilled a long time ago never got to the objective horizon. We went back to review the (geological) data and we are convinced that there is a lot of potential there that we did not see in the first well."

"I think we know enough about the offshore (Gulf of Thailand) part," said Unocal senior vice president John Lunde, indicating there may be less hydrocarbon potential in the offshore areas open for rights holdings.

Mr. Lunde said Unocal would sometimes visit its high-level gas development activities in Thailand for as long as there was a strong market.

"A market already exists for increased gas production," said Mr. Lee.

He cited a Unocal estimate which put the Thai gas demand, mainly for power generation and industries, at over 1,400 million cubic feet per day (MMcf) per

1997. Despite additional gas supplies from Unocal's other Gulf fields and the "Gobagat" (once known as "Borabur") field being developed by a European, Thai consumption led by Ethical CFF, he said supply would continue to lag behind demand in the years ahead.

Current gas production from Unocal Thailand's five fields in the Gulf stands at about 620 MMcf, enough to generate over 60% of Thailand's electricity supply. This is in addition to 21,000 barrels per day of condensate, the hydrocarbon liquid produced in association with gas. Cumulative gas production from Unocal's Gulf fields to last September totalled 1.182 billion cubic feet.

With additional gas fields under the so-called Unocal III agreement put on stream, Unocal plans to increase gas production to about 140 MMcf beginning in 1992.

Unocal said the company's development plans should increase production at or above the current level well into the next century.

Meanwhile, Unocal Thailand has discovered natural gas in block B12/27 in the Gulf of Thailand which it operates on behalf of a subsidiary in which it owns a 26% interest. Mr. Lunde said the company had not yet been able to establish the commercial viability of the field.

He said the company has no plans to engage in any other gas production, such as petroleum refineries, to support its Thai gas production.

"I'm not sure we need that support because the market for gas is for power generation," he said. "What we know best is producing gas and sending it to the PTT (Petroleum Authority of Thailand) distribution system."

Except for its recent venture into sales of lubricant oil, Unocal has no plans to enter the distribution and retail oil market here.

"The market is very competitive and a lot of players have a lot more than we do, so any one feeling it that it is not a business in which we should become involved," said Mr. Lunde.

Los Angeles — Unocal Corp. hopes to boost its dominant role in Thailand's natural gas production by tendering for five more gas concession blocks in the Northeast.

The tracts, situated on the Khorat Plateau which is generally believed to be gas-prone, form an important part of the L.A.-based oil giant's strategy to obtain petroleum prospecting rights in four countries. Unocal is producing hydrocarbons in seven countries and has exploration activities in six others.

If endorsed by the Thai Government, Unocal International oil & gas division president Harry Lee said the current project here would trigger a substantial investment on top of the US\$2 billion odd the company plans to spend over the next 10 years to increase natural gas output from fields in the Gulf of Thailand.

Thailand represents Unocal's single largest overseas investment. Capital investment up to September, largely in its Gulf of Thailand gas schemes, had reached \$1.96 billion, he said.

Local gears up for larger gas production role



by Boonsong
Kosichotecharn

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"A market already exists for increased gas production," said Mr Lee.

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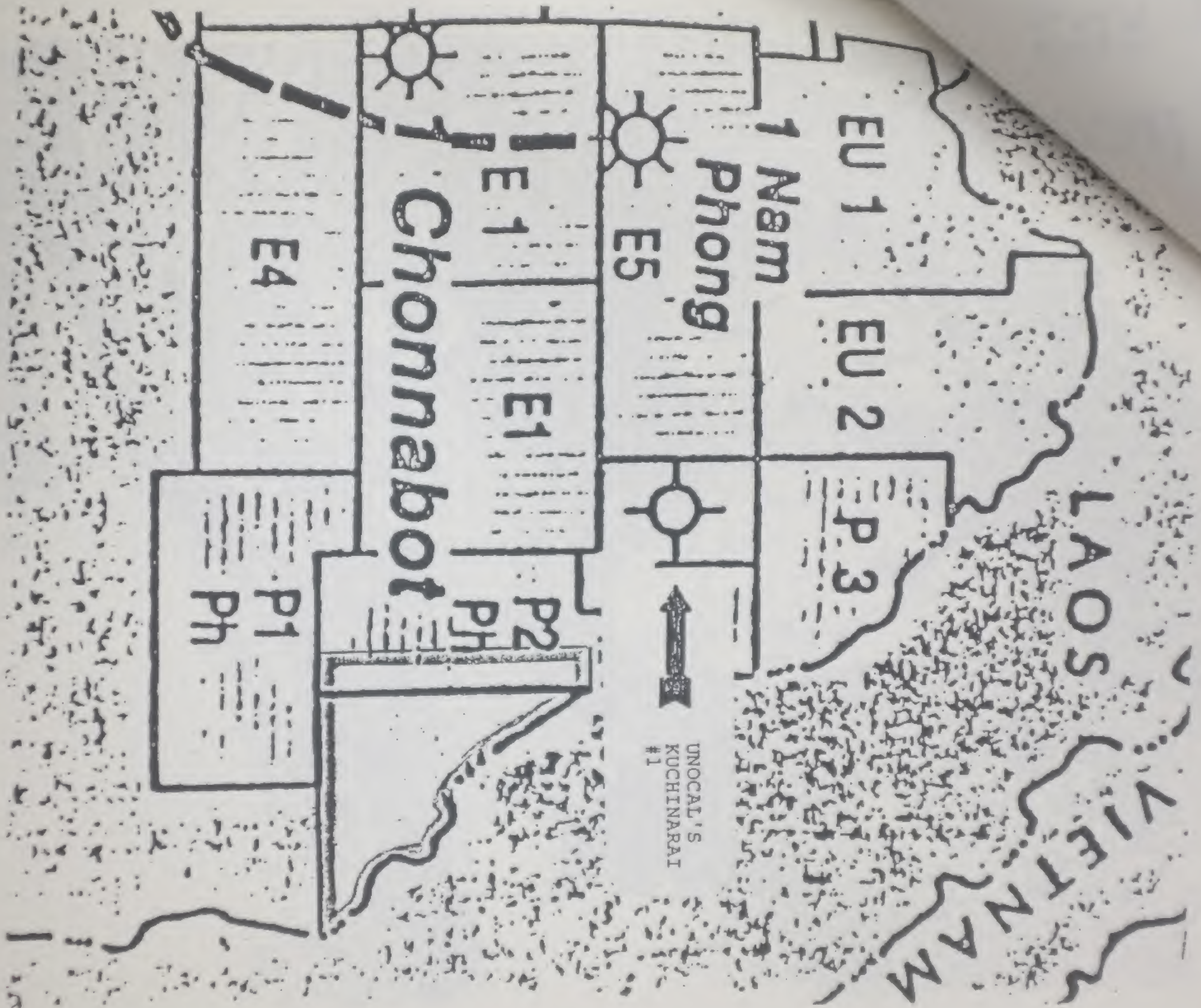
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Los Angeles — Unocal Corp hopes to set its dominant role in Thailand's natural gas production by undertaking for more gas concession blocks in the near future.

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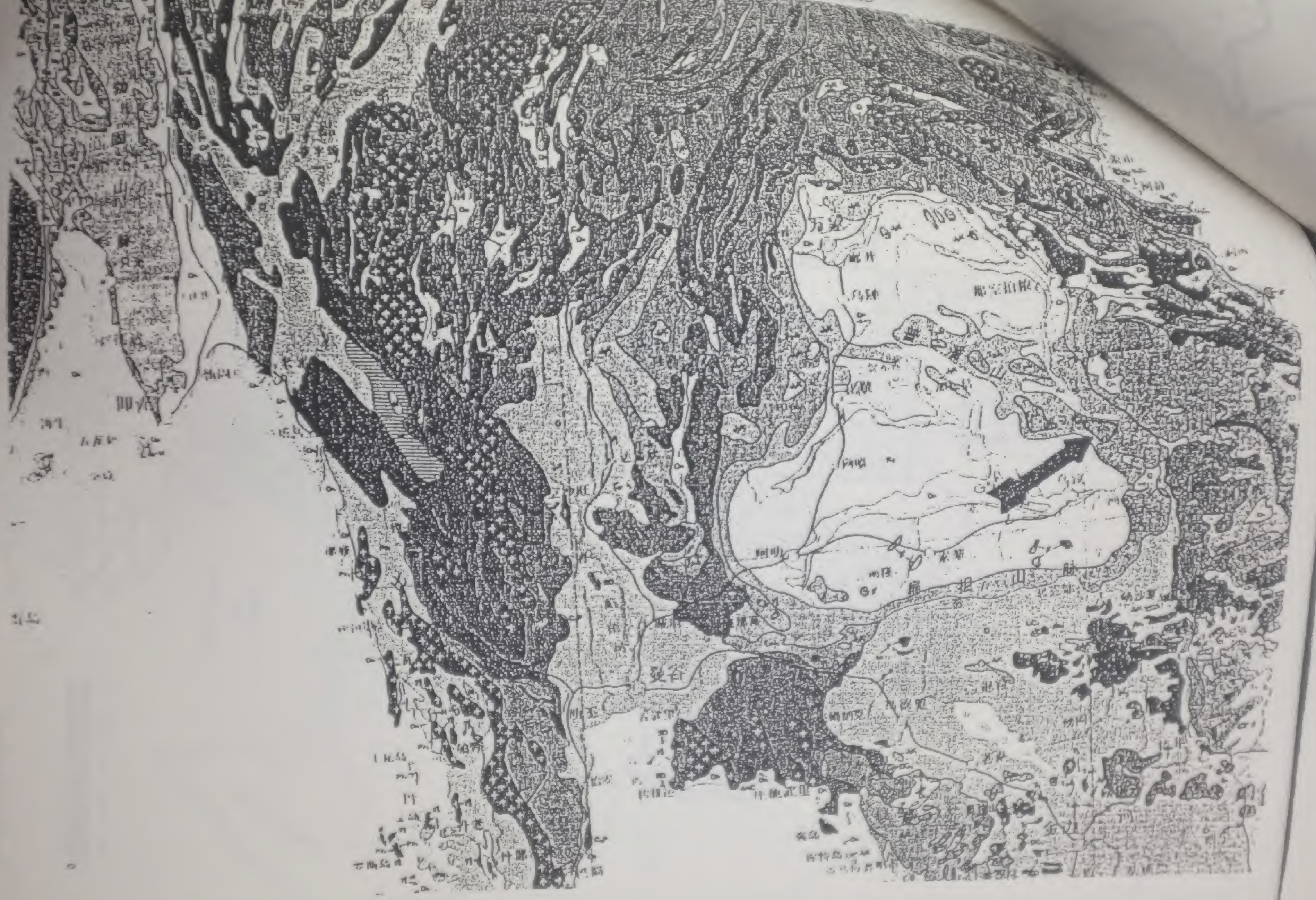
Endorsed by the Thai Government, local international oil & gas division president Harry Lee said the newest province would trigger a substantial investment on top of the US\$2 billion-old company plans to spend over the next 10 years to increase natural gas output from fields in the Gulf of Thailand.

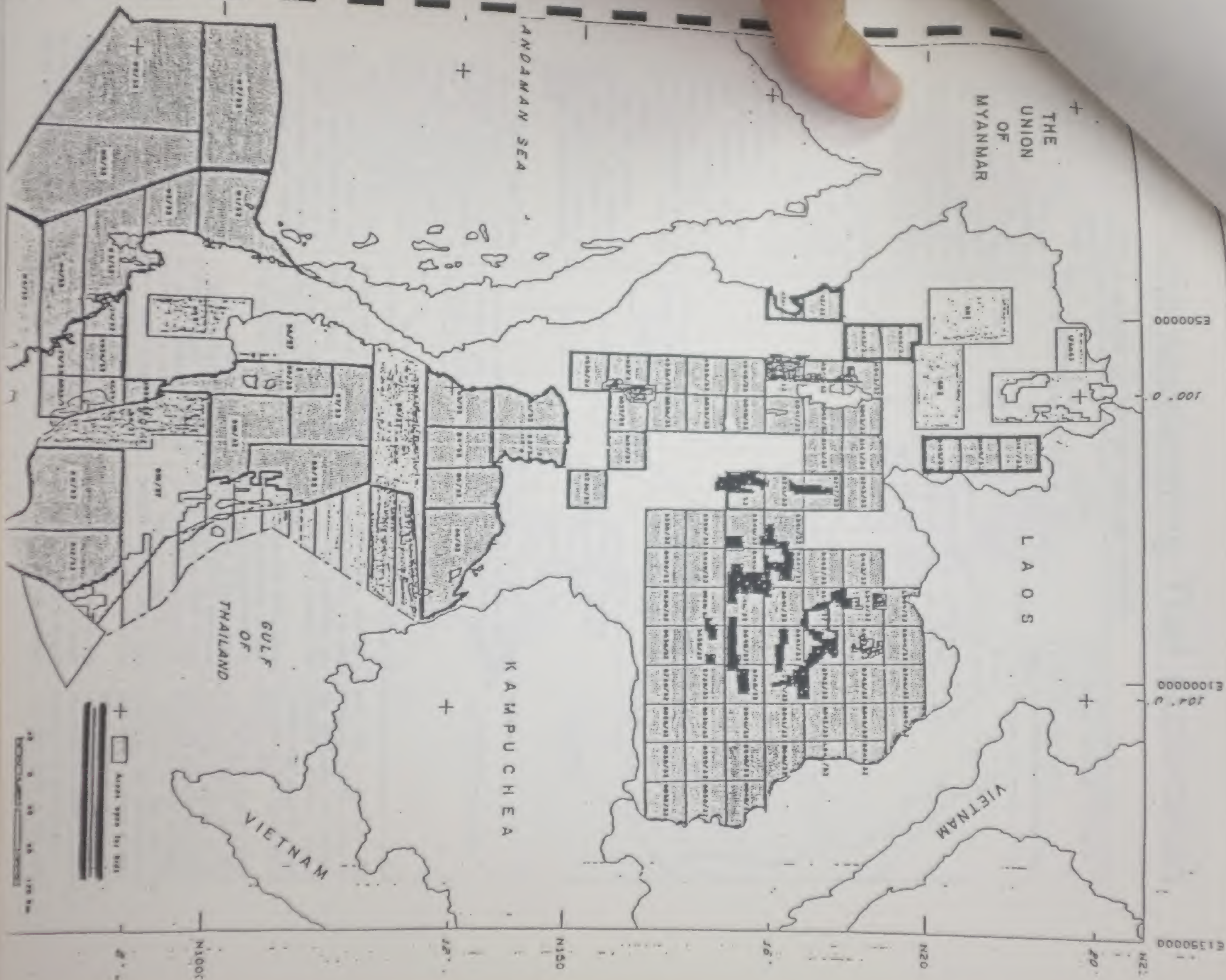
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UNOCAL'S
KUCHINARAI
#1

ESSO ASIA'S NAM PHONG AND CHONNABOT FIELDS





Foreign firms accelerating Thai exploration

A sample of Thai oil and gas activity

Multinational companies are stepping up exploration in Thailand as that country seeks to attract more foreign upstream investment.

Unocal Corp.'s Thai subsidiary, which accounts for most of Thailand's gas production, continues to be the dominant foreign operator. The company's latest push focuses on establishing commerciality of gas/condensate discoveries near its existing production in the Gulf of Thailand.

U.K. independent Premier Consolidated Oilfields plc is mulling its next step while studying results of a recently completed drilling program in the Gulf of Thailand that yielded some modest oil and gas discoveries.

State owned PTT Exploration & Production (Pteph) has agreed in principle to name British Gas plc (BG) as its partner and operator of the oil prone Block 5/27 in the Gulf of Thailand.

Meantime, bidding was scheduled to be complete last week on Thailand's biggest—and first in 5 years—oil and gas concession licensing round.

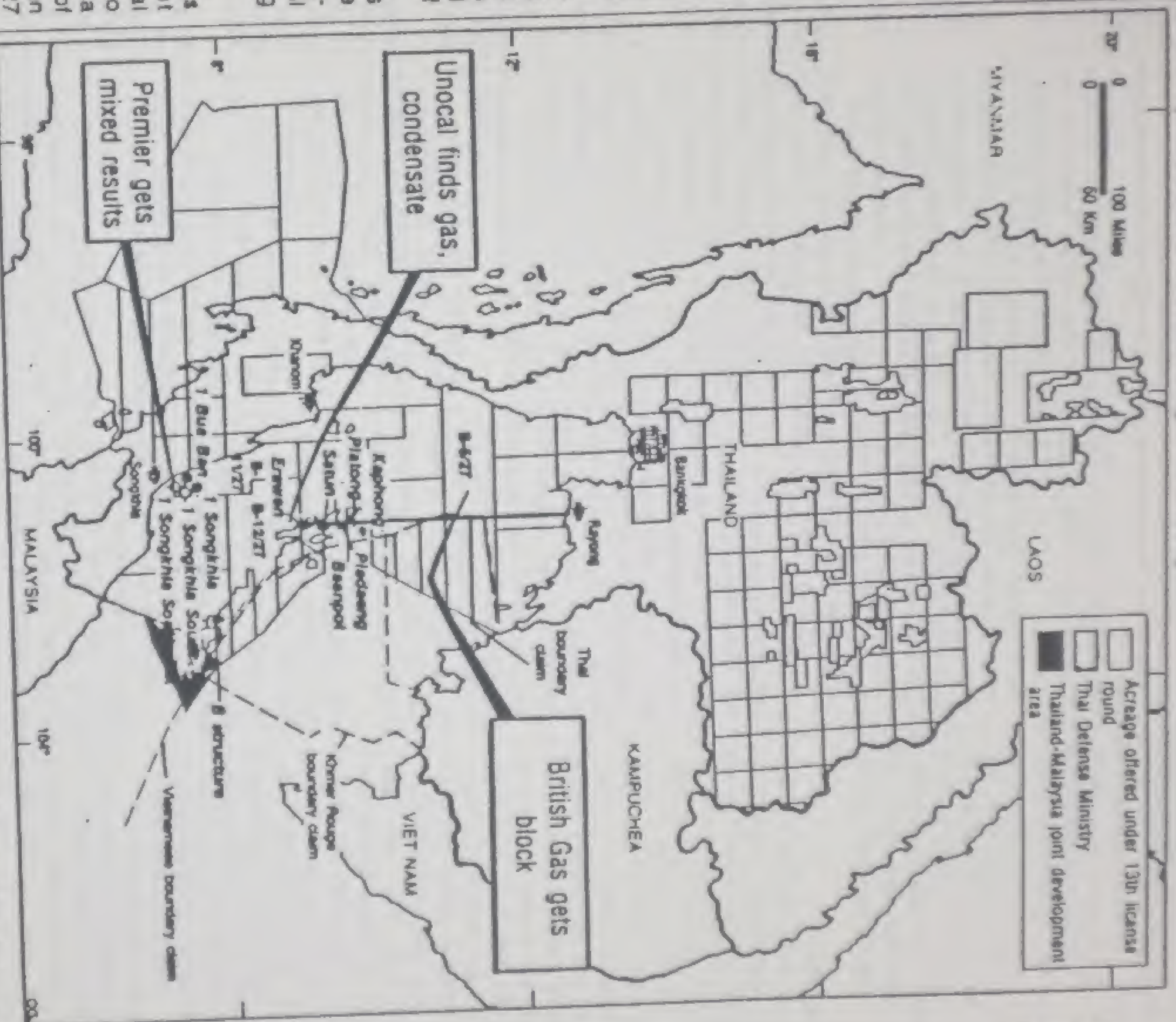
Unocal group's focus

Encouraged by recent promising results, Unocal Thailand and partners plan to enter the next phase of a campaign to assess extent of gas/condensate deposits on the gas prone Block B-12/27 in the Gulf of Thailand.

Initially, that calls for a major 3-D seismic survey expected to begin late this year. It would be followed by a drilling program tentatively set to begin near yearend 1991.

But Unocal Thailand, which operates the 13,550 sq km concession, has yet to obtain approval for those plans from partners Britoil plc, Amerada Hess Corp., and Mitsui Oil Exploration.

The planned seismic survey, to cost about \$3 million, will involve 8,000 line km. The group has not decided on the number of wells to be drilled on the block after the



seismic survey is completed, but they are to be delineation wells, Unocal Thailand Pres. Graydon Laughbaum said. To date, a total of 10,670 line km of seismic survey has covered the block.

Current program

The Unocal group's current drilling program is wrapping up as its 1 Kaimuk, the last wildcat in the four well program, approaches planned total depth of 10,820 ft.

The Sedco 601 semisubmersible is drilling the well about 58 km southwest of Erawan field's central processing platform (CPL).

The four wells, costing a total of \$9.5 million, are near other Unocal operated gas fields, including Erawan and Baanpot.

The group has found gas in the first three wells: 1 Morakot, 1 Palin, and 2 Palin. The most recent, 2 Palin, drilled to 11,572 ft 57 km southeast of the Erawan CPL, flowed 5.7-7.5 MMcf of gas and 60-117 b/d of condensate through a 1/2 in. choke from various intervals between 10,732-11,310 ft.

Flow rates were not disclosed in the other two wells, although both were suspended as potential gas produc-

ers. The 1 Morakot was drilled to 11,120 ft about 23 km southeast of Unocal's Baanpot A platform, and the 1 Palin was drilled to 11,859 ft about 40 km southwest of Erawan CPL.

Laughbaum said the Palin trend contains the most promising structures on the tract and will get top priority for the 3-D seismic coverage.

Results of the seismic campaign will determine locations and number of delineation wells to assess commerciality of the discoveries. There are no plans as yet to develop the gas strikes. Unocal owns a 35% inter-

Block with Britoil
Canada 15%, and Mil-

Premier's program
Premier has temporarily suspended its drilling program off Songkhla, along the eastern coast of the Thai peninsula, following unsuccessful results in its latest wildcard.

Tests of its 1 Songkhla Southwest, the fourth well drilled on Block B-11/27, yielded only small crude oil shows, and the well was plugged as a dry hole.

Results from 1 Songkhla Southwest, drilled about 16 km south-southwest of the 1 Songkhla oil discovery well, have raised doubts about the extent of the block's oil bearing structure.

Another wildcard, 1 Songkhla South, about 6 km south of the discovery well, also was dry.

A fourth drilled earlier, 1 Bua Ban, flowed 29° gravity oil at rates of as much as 750 b/d, half of 1 Songkhla's yield (OGJ, April 16, p. 32).

Premier said 1 Songkhla Southwest ends its current drilling program focusing on the Songkhla basin. It will be followed by study and correlations of well results, seismic data, and geological interpretations.

The company will resume drilling on the block in first half 1991. That will include drilling in two other basins on the block not yet explored.

Premier let contract to Western Geophysical to acquire 2,000 line km of 2-D seismic survey on the block. Work started in midsummer.

Operator Premier holds a 55% interest in the concession with Petrofina SA holding the remaining 45%.

British Gas venture
While details of BG's agreement are to still to be ironed out by yearend, BG tentatively will receive a 50% interest in the concession and is required to absorb all exploration costs the first 8 years.

BG is obliged to fulfill the minimum program required of Ppmp by the Thai Department of Mineral Resources: drilling one exploratory well and

This is the second of three articles on Thailand's expanding petroleum industry. This week, a look at exploration by foreign companies in Thailand. Next, a look at Thai downstream expansion.

shooting at least 2,500 line km of seismic survey with a minimum outlay of \$3 million in the first 3 year obligation period. Work and expenditure commitments for a second obligation period of 5 years also call for one well and a \$3 million minimum.

There appears to be some reduction from the work Pteep first wanted undertaken under negotiations that saw BG outbid Norway's Den norske stats oljeselskap AS (Statoil) and Canada's Petro-Canada. The winner initially was required to commit at least \$8 million for work that included drilling four wells the first 8 years. (OGJ, Apr. 2, p. 24).

It will be the second major upstream venture for BG in Thailand.

Last March, BG signed an agreement to obtain a 20% stake in a \$650 million venture with Pteep, Total CFP, and Statoil to develop the B structure gas field in the Gulf of Thailand.

Block 5/27 covers 15,320 sq km off the southern isthmus province of Prachuab Khiri Khan, just north of Thai Shell Exploration & Production's suspended Nang Nuan oil field.

Previous exploration has indicated the block could contain as much as 165 million bbl of original oil in place, according to official government estimates.

Licensing round
After a series of delays, Thailand invited foreign oil companies to take part in its 13th petroleum licensing round since the kingdom's first Petroleum Act was passed in 1971.

On offer onshore are 83 blocks, each with an area of about 3,000 sq km.

In the Gulf of Thailand, 12 tracts, with areas of 5,000-15,000 sq km, are up for bid.

Six 5,000-15,000 sq km blocks in shallow waters of the Andaman Sea and three 20,000 sq km Andaman Sea

blocks in water depths exceeding 200 m are also on offer.

Part of the delay in announcing the tender, previously scheduled for first quarter 1990, stemmed from changes in number and size of the blocks. Previously, a total of 109 tracts were planned for licensing (OGJ, Dec. 18, 1989, p. 22).

Requirement criticized
But more importantly, the licensing round delay was due to an adjustment of concession terms, notably a requirement that foreign operators incorporate in Thailand with an upfront payment of 100 million baht (\$4 million) to be eligible for concessionary rights. The condition has drawn criticism, especially from U.S. oil companies on grounds it complicates taxation and accounting matters under U.S. laws.

The U.S. companies said the amount involved was not a stumbling block but they were concerned about accounting and tax considerations for foreign subsidiaries registered in such countries as Bermuda or Panama.

The requirement, not contained in the country's new petroleum laws, was meant to force license holders to pay costs of contracts and

services needed for operations in Thailand.

One local analyst said the condition could hamper the Thai government's effort to attract more foreign petroleum operators to the country as intended under a long process of sweetening national petroleum laws.

But the Persian Gulf crisis stemming from Iraq's invasion and takeover of Kuwait may lead oil companies to step up efforts to search for reserves outside the Middle East and thus spur them to turn to Thailand, he said.

Other terms
As part of its policy to attract more companies and place limits on concessionary rights of operators in Thailand, the government will require a foreign company to apply for not more than four tracts or a total acreage of about 20,000 sq km in all areas except waters greater than 200 m deep in the Andaman Sea, said Thai Department of Mineral Resources Dir. Gen. Visith Noppan.

Concessionaires will extend the Thai government first right of refusal to buy the crude oil produced from a block under a formula based on hydroskimming yields, multiplied by average products prices in Singapore, and reduced by refining costs and gross refiner's margin of not more than \$3.50/bbl.

For natural gas, the prices are subject to negotiations. Bidding under the licensing round was to have closed Oct. 23.

BP/Statoil in Caspian venture

BP Exploration and Norway's state owned Den norske stats oljeselskap AS (Statoil) have signed a protocol with the Soviet Union that could lead to an exploration and development joint venture in the Caspian Sea.

They signed the protocol with Caspormneftgas, the Caspian Sea operating arm of the Soviet Ministry of Oil and Gas.

BP said the protocol commits the two companies to study feasibility of deepwater

drilling and possible development of Azeri field, formerly 26 Baku Commissar's field.

If approved and market conditions are right, a joint venture could undertake drilling in the underexplored areas of the Caspian region beyond Caspormneftgas' onshore and shallow water fields that now produce about 200,000 b/d.

Azeri, about 93 miles southeast of Baku, was discovered in 1980 ft of water in 1987.

Broader gas network key to fast growing Thailand's ambitious energy strategy

Thailand plans an ambitious array of upstream and downstream petroleum projects to help meet its soaring energy demand.

The Southeast Asian nation is one of the fastest growing in a region that is outpacing the rest of the world in economic growth and especially in demand for oil and gas.

That expected demand growth has spurred a comprehensive Thai program of developing oil and gas, accelerating gas use, and building supply ties to neighboring nations with substantial gas potential.

The cornerstone of Thailand's energy policy will be increased use of domestic and imported natural gas.

That includes several options for expanding Thailand's national gas grid and creating a transnational gas grid linking it with Southeast Asian neighbors.

At the same time, Thailand is trying to beef up its downstream infrastructure in terms of capacity and sophistication.

The government also is trying to ease the nation into a market economy by phasing in deregulation of petroleum prices in the first half of this decade. In addition, it is taking steps to reduce the environmental effects of hydrocarbon fuels use.

With this aggressive push on all petroleum fronts, Thailand continues to take steps to attract more foreign investment and participation by multinational companies across the breadth of its petroleum industry.

Economic growth
Thailand's economy is expected to grow 9%/year in the first half of the 1990s.

Even that sizzling pace is down from the country's double digit economic growth of much of the 1980s.

The country's energy demand is expected to continue to soar, according to government projections for the seventh national economic and social development plan covering 1992-1996.

Energy demand growth will slow from recent double digit levels. However, demand growth will still remain impressive throughout the 1990s.

Those projections were made about the time Iraq invaded Kuwait and sparked the continuing Persian Gulf crisis.

Although the estimates may be revised as a result of higher oil prices, the country's overall development strategy is likely to proceed as planned.

If anything, higher world oil prices may give the development plan a greater sense of urgency.

H.E. Korn Dabbaransi, minister to the office of the Thai prime minister, outlined the plan at the Asia-Pacific Petroleum Conference in Singapore last month.

Korn estimated Thai economic growth at 12.3% in 1989 and 10% in 1990.

Total Thai energy consumption increased by 17.7% in 1989 and is expected to rise by about 16% this year, he said.

He further expects Thai energy demand to grow 10%/

year in the first half of the 1990s and 7%/year in the rest of the decade.

Oil currently has about 66% of the Thai energy mix, natural gas about 18%. More than 60% of Thai energy supply is imported, mostly in the form of oil.

Total Thai energy consumption will be almost 1 million b/d of oil equivalent in 1995, rising to 1.4 million b/d by 2000.

Petroleum will account for two thirds of that.

Deregulation
Korn said the Thai government plans to deregulate oil prices in phases possibly within the first half of the decade.

"Oil prices will be determined only by market forces," he said.

The first steps in the process have been taken. As of last August, domestic oil prices are being set by senior civil servants using a new formula to partially deregulate oil prices, adjusting prices "in line with world market movement."

Trade barriers also will be relaxed or lifted, allowing international marketers increased access. Foreign investors will play an increasingly important role in Thai oil and gas development because of eased contract terms under amendments to the Petroleum Act and Petroleum Income Act.

Most domestic petroleum operations in Thailand are under the auspices of state owned Petroleum Authority of Thailand (PTT). Last July the Ministry of Industry invited oil

companies to apply for concession rights in 104 exploration blocks.

The invitation will close at the end of this month.

Cutting oil imports

Because much of Thailand's hydrocarbon potential is gas prone, natural gas will be a key to reducing Thai dependence on imported oil in the years ahead.

Thailand produces about 600 MMcfd of gas but only 25,000 b/d of oil.

Korn expects gas flow to reach 1.1 bcd by the end of the 1990s as new fields are developed (OGJ, Apr. 2, p. 22).

Tongchat Hongladaromp, former PTT governor and now senior PTT adviser, projects Thai demand for natural gas to climb 9.1%/year, reaching 350,000 b/d of oil equivalent by 2000. That level is about triple current gas production.

Much of the increased gas demand will be met with imports from Malaysia, Indonesia, or Myanmar.

PTT has not set a priority as to which of the three countries it would buy gas supplies from first. Tongchat said. That depends on terms and conditions of supply arrangements.

With limited indigenous energy resources and rising energy demand, Thailand will continue to rely heavily on imported petroleum the next few decades. Tongchat said. And with depleting oil sup-

*This is the first of three articles on Thailand's rapidly expanding petroleum industry. This week: Increased gas utilization forms the cornerstone for Thai energy plans.
Next: a look at Thai E&P.*

Unocal hikes Thai gas flow to offset cutoff oil supplies

Unocal Thailand has boosted gas deliverability from Gulf of Thailand fields to replace Thai power plants' fuel oil supplies lost to the Persian Gulf crisis.

Unocal last month ramped up Thai offshore gas flow by about 9% to 610 MMcfd in response to a request by state owned Petroleum Authority of Thailand (PTT).

The increase was made possible by accelerating by 1 month the start-up of a gas compressor platform installed in the central processing complex in Erawan field. The \$28.5 million cost of the project will be shared equally by the two companies.

The added gas will offset the loss of fuel oil supplies from the state owned refinery at Bangchak.

The plant is one of the country's three refineries hit by the loss of crude supplies resulting from an international embargo of Iraq and Kuwait in response to Iraq's invasion and takeover of Kuwait.

Project details

PTT earlier had planned to run a pig to inspect its 425 km sub-sea pipeline from Erawan to the eastern seaboard near Rayong before taking on the added gas

flow.

That would have pushed the start-up into this month.

Instead, Unocal began hiking Erawan flow in 10 MMcfd increments beginning Aug. 30.

Unocal said the phased start-up will allow initial testing of operations and equipment on the compressor platform as well as smooth introduction of additional gas to PTT's processing plant at Rayong and other onshore sites.

The new compression facilities will allow a further increase in the Erawan pipeline's capacity to more than 800 MMcfd from about 540 MMcfd.

plies in the Far East, notably from Malaysia and Indonesia. Thailand will have to rely even more on crude and product supplies from the Middle East.

Further, Tongchat said, the time is not right to introduce nuclear energy into Thailand, given environmental concerns over nuclear plant safety, but in the longer term Thailand cannot ignore nuclear power.

Gas grid expansions

An ambitious expansion of gas gathering and distribution networks in and outside the country is the key to efforts to increase Thai gas use.

Thailand is studying plans to develop an extensive transnational gas grid linking its expanding national network with three neighboring countries to boost imports of gas.

A study by PTT, which also holds the domestic gas distribution monopoly, envisages a massive investment in laying natural gas pipelines from Malaysia, Indonesia, and Myanmar.

The three countries are seen as the most likely sources of gas supply capable of responding to Thailand's fast growing gas demand.

Thailand's gas productive capacity, currently 620 MMcfd, is likely to continue to lag far behind expected growth in gas demand espe-

cially from power generation and industrial sectors.

Tongchat suggests the entire regional grid could be developed during the next 3 decades in stages, likely to start with importing gas from Malaysia via pipeline.

PTT and Malaysia's national oil firm Petronas recently agreed to begin a joint study on a transnational grid.

The first Thai-Malaysian line would run from Kota Bharu, Malaysia, north via Songkhla to Khanom on the southern Thai peninsula. The peninsular trunkline would tie into systems bringing Gulf of Thailand gas ashore either at Songkhla or Khanom. A 161 km subsea line planned from Erawan field in the gulf to landfall at Khanom is scheduled for completion in 1994, along with a 170 km subsea line from the B structure field to Erawan.

Another Thai-Malay gas grid option would involve a line from Bekok area fields off Terengganu, off eastern peninsular Malaysia to the joint development area (JDA) in the South China Sea claimed by Thailand and Malaysia.

The Thai-Malaysian offshore network would be completed by another line from JDA to the B structure, partly owned by PTT's exploration arm PTT Exploration & Production (Pteph).

Yet another option is a route from the B structure to Songkhla, a center for eco-

nomic development on the southern peninsula.

In addition, Thailand is considering two other possible transnational pipelines in the 1990s.

One line would run 500 km from gas fields in Myanmar's Maraban Bay southeast to the western Thai province of Kanchanaburi and possibly to Bangkok.

The next 2 decades could also see installation of a sub-sea line from Indonesia's giant Arun gas field in northern Sumatra across the Strait of Malacca to the southwestern Thai province of Krabi. From Krabi it would extend farther across the Thai southern peninsula to Khanom.

PTT also plans to lay another trunkline to ship gas from the south to the Thai central plains in the 1990s (OGJ, July 30, p. 30).

There are two optional routes to the central plains being studied by Fluor Daniel and PTT.

The first route would parallel the existing 425 km sub-sea Erawan-Mab Ta Phud line coming ashore on the Thai eastern seaboard. The other calls for a an onshore line from Khanom north to Bangkok, assuming offshore gas is landed at Khanom.

Tongchat, also president of Pteph, said determining the priority for these various pipeline projects will hinge on purchase agreement terms PTT can get from producers.

Thai-Malay link

The Thai-Malay study covering a mutual gas pipeline link resulted from an agreement between PTT and Petronas in Kuala Lumpur last month.

The onshore line would run about 200 km from Khanom in Nakhon Si Thammar Province south to the Thai-Malay border via Songkhla Province's Sabayoi district, where a large, gas fired power plant is planned.

At the border, this line could tie into the Malaysian peninsular trunk system planned along both coasts of the Malaysian peninsula under the third stage of Petronas' Peninsular Gas Utilization (PGU) project. One of the possible connecting points is at Kota Bharu at the northeast tip of peninsular Malaysia.

With this approach, the offshore part of the Thai-Malay gas system would extend about 100 km from the JDA northwest to the B structure field.

According to PTT Deputy Gov. Pala Sookawesh, the proposed onshore Thai-Malay line would transport gas from Malaysia's fields off Terengganu to fuel the 900,000 kw, gas fired, combined cycle power plant at Sabayoi and other industries in the Songkhla region. Preliminary estimate of regional demand is as much as 150 MMcfd. Offshore Terengganu area

UBON RATCHATHANI

From Cul De Sac To Gateway

by Keith Mundy

Isan was long a crossroads of Southeast Asia, meeting point and battleground of successive competing empires — Khmer, Annamese, Lao, Siamese. Its current population bears witness to this past in the predominance of Lao speakers, and significant numbers of Khmer and Vietnamese speakers. Most recently, in 1975, Vietnamese-supported communism reached its borders and closed off Laos and Cambodia to the north, east and south.

Isan, never thriving, became a cul-de-sac, hemmed into a corner, a long way from the sea. Now, suddenly, in the last two years, horizons have opened up again. Several factors are influencing this but the most important is the thaw in Thai relations with the Indochinese states. 1988 was a watershed year: Laos followed its New Economic Mechanism with a liberal Foreign Investment Code, the Vietnamese started to withdraw from Cambodia, and newly-installed Thai Prime Minister Chatichai Choonhavan promised "to turn the Indochinese battlefield into a marketplace".

These positive political moves were backed up by the boom in the Thai economy and soon Northeastern provincial leaders began to see great prospects ahead, none more so than those of Ubon Ratchathani. Located in the far corner where Thailand meets both

Laos and Cambodia, it now sees itself not as a dead end but as a gateway.

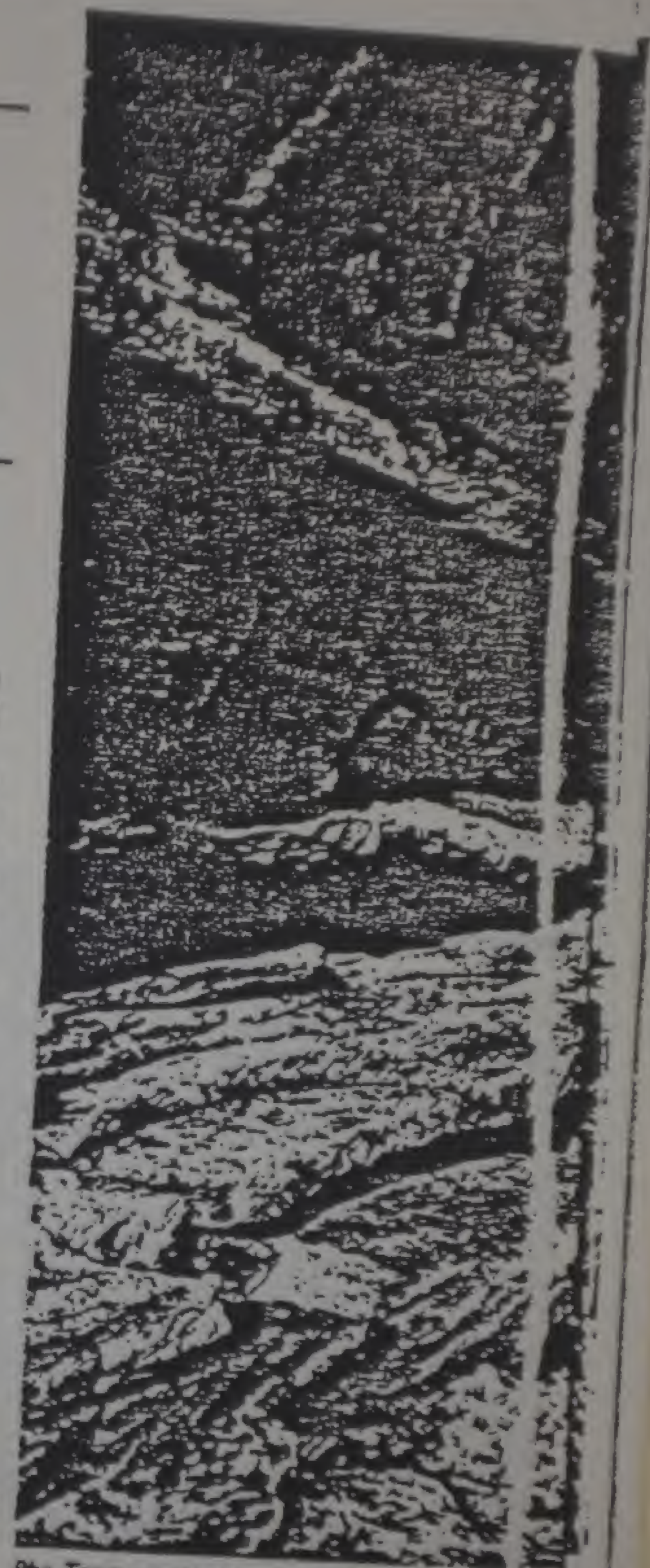
Plans are afoot to make Ubon province the manufacturing and distribution centre for the new international market. Major civil engineering projects are in the works or on the drawing boards: an international airport, a new dam and a Mekong bridge. A local college is being upgraded to university status. Industrial and tourism development plans have already resulted in the laying-out of industrial estates and the opening of a Tourism Authority of Thailand regional office.

All this is building upon an already solid base. Ubon has had a rail link to Bangkok since 1926 and a domestic airport for many years now. The Sirindhorn Dam to the south has provided hydro-electric power up to 36000kw since 1971. With nearly two million people, the province has a large labour pool. The new projects are intended to usher in a new era of prosperity by facilitating a great increase in production and trade.

The Pak Mun Dam should ensure adequate power in the future, factory building will provide productive capacity, and the university will produce highly-skilled personnel. The new airport and bridge will immensely enhance transportation and this is especially important. Significantly, a new

road has been laid linking Ubon's region with the Eastern Seaboard and Laem Chabang deep sea port. Therefore, when the international airport is in operation, Ubon will have import/export access by both air and sea that avoids the Bangkok bottlenecks of Don Muang Airport and Khlong Toey Port.

The links with Indochina are yet to be finalised, even on paper, but the will is strong. There are



Pha Taem overlooking the Mekong and Laos.



two competing sites for the Mekong Bridge to Laos, one at Khong Chiam near the confluence of the Mun River with the Mekong directly west of Ubon city, the other at Khemarat to the northeast of town. Either would give access to the Laotian provincial centres of Pakse, Saravane and Savannakhet, and the agriculturally rich Bolovens Plateau.

Potentially more important is

that the bridge would open up not only southern Laos to road traffic but also Vietnam and Cambodia. From Pakse, Highway 9 leads east to central Vietnam and the South China Sea port of Danang; Highway 13 runs south to Phnom Penh and Ho Chi Minh City. In the meantime, provincial officials and entrepreneurs are working to increase border crossing points, expand ferry services, and per-

suade Laos to allow visitors to exit from a point other than that which they entered by, as is the current restrictive rule.

The unresolved conflict in Cambodia is the fly in the ointment for Ubon's tri-national trade hopes but investors don't seem worried. Land prices around Ubon have risen five times or more in the last two years, especially in the areas most suited to indus-



Pathumrat Hotel, Ubon city.

trial estates, such as along Highway 217 near the Sirindhorn Dam, Highway 23 towards Yasothon, and Highway 212 heading to Mukdahan. There didn't use to be anything much more industrial than rice milling around here, yet now land destined for industry is being snapped up by Thai and foreign speculators alike.

Most of these had quite likely never been to Isan before and neither do many tourists stray this way. It has the reputation of an arid plateau with little beauty, but Ubon holds a few surprises and TAT is planning to work on them, both through promotion and development. To this end, the soubriquet 'Emerald Triangle' is being pushed, 'Green Isan's' answer to the North's 'Golden Triangle' where Burma, Laos and Thailand meet.

Ubon's scenic attractions are mostly water-related, the Mekong and Mun Rivers, their rapids, the Sirindhorn Dam and some waterfalls. The dam lies some 70km east of the city and forms an extensive lake. On the Mun River east of town are two rapids that are popular picnicking and wading spots in the dry season. At this time, the rocks of Kaeng Saphue and Kaeng Tana are high and the waters foaming. Some 9km from Kaeng Saphue is the five-metre drop of Tad Tone Waterfall.

As the Mun enters the Mekong, its relatively clear waters run alongside the richly muddy Mekong, creating the sight known as the Two-Colour River. One guide calls

it "where the blue Moon meets the brown Khong". Here at Khong Chiam are also to be found the strange mushroom-like rock formations of Sao Chaliang. Just a few kilometres north lies Ubon's most atmospheric attraction, Pha Taem. This cliff rises jagged above the Mekong flood plain and faces the river with prehistoric rock paintings extending over one-and-a-half kilometres.

Not surprisingly, developers have plans for vacation resorts along the scenic Mun River and its meeting with the Mekong, while TAT plans to improve access and other facilities at Kaeng Tana, Pha Taem and the Two-Colour River. New hotels are also planned for the city, ground-breaking pending finalisation of the big projects such as the Mekong bridge which should ensure an influx of business. Meanwhile, the biggest is the Krung Thong with 143 rooms and the best is the Pathumrat at around 300 baht a night.

Ubon is one of the biggest cities in Thailand but still counts well under 100,000 people. That may change rapidly within the decade but for now it is the usual none-too-hurried commercial hotch-potch of a Thai provincial seat. It achieved its present size with much assistance from USAF money in the 1960s when the local airbase hosted American strategic bombers engaged in the devastation of Indochina. Many wars become well-endowed at this time, though the city did not attain the beauty suggested by its

full name, which means 'Royal Town of the Lotus Flower'.

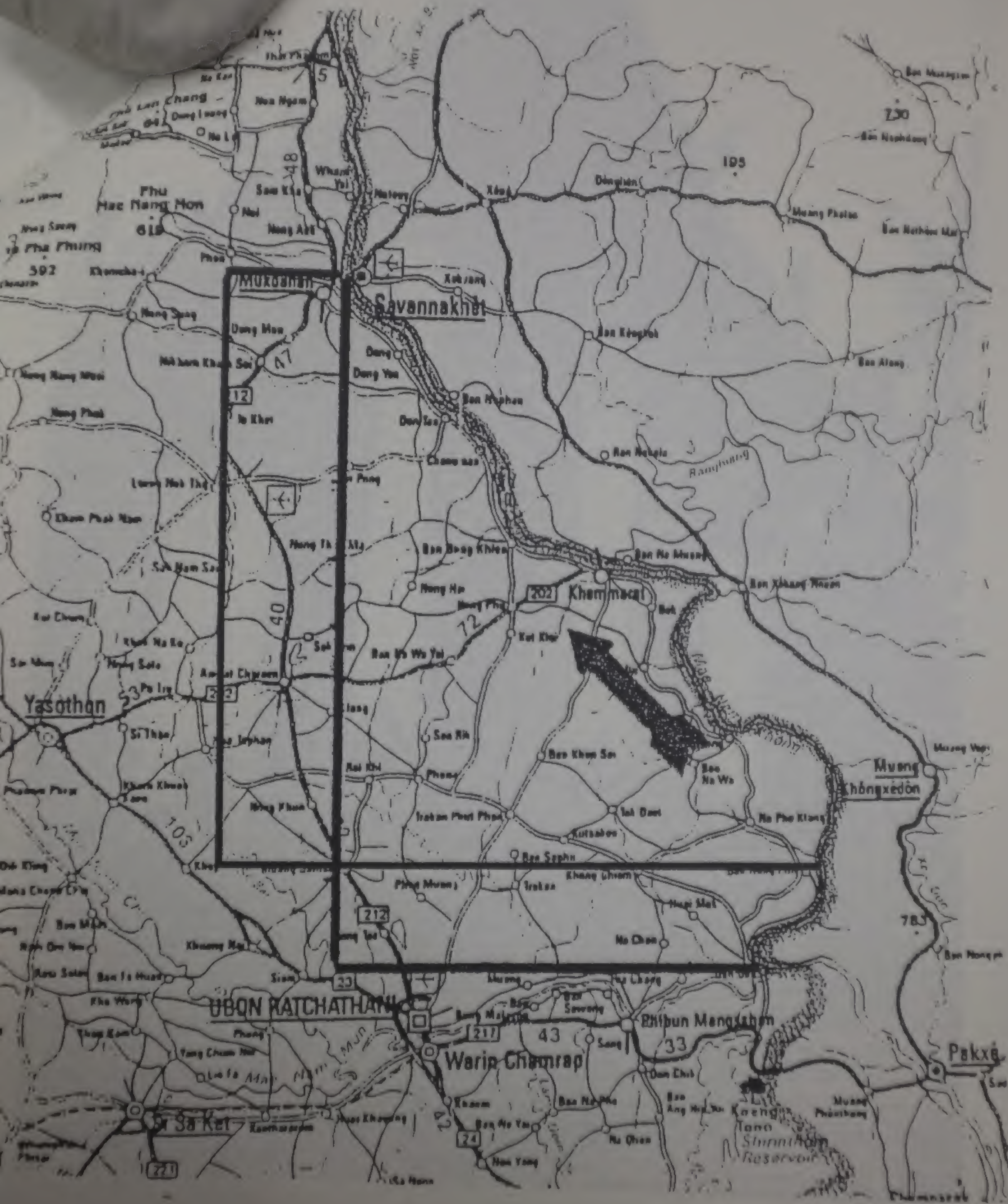
The most distinctive temples lie outside town. On the outskirts, Wat Nong Bua is notable for its double four-sided stupas, elegant stone structures modelled on the Mahabodhi of Bodh Gaya, India. Some 75km north of town in Amnat Charoen district is the Buddha Uthayan, a park with a huge gold mosaic sitting Buddha, the Phra Mongkol Ming Muang.

In the other direction and in contrastingly ascetic mood are two forest monasteries. Wat Nong Pa Pong at Warin Chamrap is in the care of Acharn Cha, known for his simple and direct teaching which has brought hundreds of Westerners to study here in recent decades. Nearby is Beung Wai International Forest Monastery where the abbot and monks are mostly foreign.

Pleasant as many of these places may be, Ubon's tourism plans are not limited solely to the province itself, however. The opening-up of Indochina presents the opportunity for Ubon to be a tourism as well as a trade gateway. Of supreme interest is the magnificence of Angkor Wat in Cambodia, while other notable Khmer remains are Khao Phra Viharn straddling the Cambodian border with Ubon and Wat Phou in Laos's former southern kingdom of Champasak. Ubon could also serve as a gateway to Thailand for tourists exiting Indochina.

Right now, Ubon's major tourist event and greatest claim to fame is its elaborate Candle Festival held each July at *Khao Phansa*. Beautifully carved beeswax candles, some of them several metres tall, are exhibited in colourful parades before being presented to local temples, where they may burn for the duration of Buddhist Lent.

Soon the province hopes to be known better as the prosperous bridgehead to a peaceful and revitalised Indochina. Time will tell if things pan out that well but Ubon is nevertheless increasingly aiming that way.



THE NATION
BUSINESS

Thursday April 25, 1991

17 companies granted 33 petroleum deals

PICHAYA CHANGSORN
The Nation

THE CABINET has awarded a total of 33 onshore and offshore petroleum concessions to 17 applicants, informed sources said.

A total of 22 companies seeking 62 petroleum concessions had applied for the exploration and development rights.

The ministry issued invitations for a total of 104 concessions.

Sources said Thai Shell Co obtained three concessions (5742/32, 5744/32 and 5841/32), while Thai Shell Development Co gained four concessions, (5338/32, 5339/32, 5438/32 and 5439/32). They are all in the Northeast.

Unocal Bangkok Co received four concessions (5543/32, 5843/32, 5941/32 and 5942/32) in the Northeast from five concessions sought.

Total Exploration Co of France received one (5743/32) out of two concessions it had sought in the Northeast.

Thaitex Petroleum Co from the US

obtained one concession (B4/32) in the Gulf of Thailand.

Ampol Exploration Co from Australia also gained one concession (B10/32) in the Gulf of Thailand.

Canadian Occidental Petroleum Co from Canada received one concession (5842/32) after applying for four in the Northeast.

Coho Resources Co of Canada was awarded two plots (5041/32 and 5043/32) out of four in the Central region.

Croft Exploration Co of Britain received a total of five concessions two of which are in the South (5024/32 and 5025/32), two in the Northeast (5442/32 and 5541/32) and one in the Andaman Sea (W6/32).

The company had sought 10 plots.

CTC Minerals Co of the United States received two out of five concessions it had sought in the Northeast (5940/32 and 6040/32).

Fina Exploration Co of Belgium and Enterprise Oil plc of Britain earned two plots in the Andaman Sea (W1/32 and

W2/32).

Fina and Texaco Exploration Far East Co of the US clinched one concession in the Gulf of Thailand (B11/32).

Kirkland Resources Holding Co of Britain and Aberdeen Petroleum from Britain received one (B12/32) in the Gulf of Thailand.

Macrsk Olie OG Gas of Denmark and Moran Oil Corp obtained one in the Gulf of Thailand (B8/32).

Nomeco Oil and Gas Co received one plot (5441/32) in the Northeast. Sun Oil International Co from the US a plot (B7/32) in the Gulf of Thailand and Texaco Exploration Thailand Co gained two plots in the Gulf of Thailand (B1/32 and B3/32).

Sources said applications from the following companies were rejected for failure to comply with the terms of the offer: Texaco International Petroleum Co, International Petroleum Co of the US, Cluff Oil from Britain, Discovery International Co of the US and Hamilton Oil Thailand from the US.

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JIRAPON TUBTIMHIN

Town

ITINERARY ARRANGEMENT

for

John Verity : Datamation
Bill Weaver : Computer Age

DATE	TIME	DESCRIPTION	VENUE
April 14, 86	10.00 a.m.	Meeting with Khun Staporn, Deputy Secretary General	BOI
	10.30 a.m.	Slide presentation	BOI
	11.00 a.m.	Computer Association of Thailand : : Dr. Swad Sangbangpla	BOI
	12.00 a.m.	Lunch	
	02.00 p.m.	Asian Institute of Technology (AIT), Computer Application Div. : Dr. Kanchit Malaiwong, Ex-Chairman : Dr. Vilas Wuvongse, Acting Chairman	Rangsit
April 15, 86	09.30 a.m.	Ministry of Commerce : Computer Center, : Mr. Wichit Poonawatra, Director	Dept. of Business Economic
	11.00 a.m.	IBM (Thailand) Co., Ltd. : Mr. Sompobh Amatayakul, General Manager : Mr. Prawit Chattalada, Manager of External & Cooperate Program	Head Ofc., IBM Bldg., Silom
	01.30 p.m.	Betagro Computer Co., Ltd., Sole Distributor of "Alphamicro" : Ms. Ornanong, : Mr. Boonrak Sarakanont, Manager	Head Ofc., Suan Mali
	03.30 p.m.	Chinteik Electronic Industries Co., Ltd., : Mr. Siva Nganthaven, Chairman	Nava-nakorn Rangsit
	06.30 p.m.	Dinner	

DATE	TIME	DESCRIPTION	VENUE
April 16, 86	10.00 a.m.	Minebea Thai, a promoted firm assembling printer and keyboard	Ayudhya
	02.00 p.m.	Siam Cement Trading Co., an authorized IBM-PC dealer : Mr. Prasong, Acting General Manager	Head Ofc., Sukumvit Sukumvit
	03.30 p.m.	Thai Farmers Bank : Mr. Kaorobh Nuchanart, Computer Div., Head	Thai Farmers Bank Bldg.
April 17, 86	10.00 ^{9:30} a.m.	Siam Steel Ltd., : Mr. Wanchai	Samrong
	02.00 p.m.	Data General, a promoted firm producing PCB, Cables, Terminal	Klongton, Sukumvit
	04.00 p.m.	Union (Asia) Plastic Factory Ltd., : Mr. Paotep, Manager	Bangchan
April 18, 86	08.30 a.m.	Chulalongkorn University : Mr. Somchai Tayanyong, Computer Center, Director	Head Ofc., Phayathai
	10.00 a.m.	Seagate Technology (Thailand) Co., Ltd., a promoted firm, producing E-Block, Head Gimble Assy., Lock Sub Assy., Actuator Assy., Stepper Motor	Assy. Site Rachdapisek

ITINERARY ARRANGEMENT

for

Bill Weaver : Computer Age

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April 15, 86	09.30 a.m.	Ministry of Commerce : Computer Center, : Mr. Wichit Poonawatra, Director	Dept. of Business Economic
	11.30 a.m.	IBM (Thailand) Co., Ltd. : Mr. Sompobh Amatayakul, General Manager : Mr. Prawit Chattalada, Manager of External & Cooperate Program	Head Ofc., IBM Bldg., Silom
	01.30 p.m.	Betagro Computer Co., Ltd., Sole Distributor of "Alphamicro" : Ms. Ornanong, : Mr. Boonrak Sarakanont, Manager	Head Ofc., Suan Mali
	03.30 p.m.	Chinteik Electronic Industries Co., Ltd., : Mr. Siva Nganthavee, Chairman	Nava-nakorn Rangsit
	06.30 p.m.	Dinner	

DATE	TIME	DESCRIPTION	VENUE
April 16, 86	10.00 a.m.	Minebea Thai, a promoted firm assembling printer and keyboard	Ayudhya
	02.00 p.m.	Siam Cement Trading Co., an authorized IBM-PC dealer : Mr. Prasong, Acting General Manager	Head Ofc., Sukumvit
	03.30 p.m.	Thai Farmers Bank : Mr. Kaorobh Nuchanart, Computer Div., Head	Thai Farmers Bank Bldg.
April 17, 86	10.00 a.m.	Siam Steel Ltd., : Mr. Wanchai	Samrong
	02.00 p.m.	Data General, a promoted firm producing PCB, Cables, Terminal	Klongton, Sukumvit
	04.00 p.m.	Union (Asia) Plastic Factory Ltd., : Mr. Paotep, Manager	Bangchan
April 18, 86	08.30 a.m.	Chulalongkorn University : Mr. Somchai Tayanyong, Computer Center, Director	Head Ofc., Phayathai
	10.00 a.m.	Seagate Technology (Thailand) Co., Ltd., a promoted firm, producing E-Block, Head Gimble Assy., Lock Sub Assy., Actuator Assy., Stepper Motor	Assy. Site Rachdapisek

CONTINUUM

October 22, 1990

Memorandum

To: Jim Cohen
From: Ken Tapman
Subject: List of Minerals & Ores for Trading - Burma

As discussed in our meeting, the following is a priority listing of minerals, metals and ores that we have the ability to trade quickly on the open market, and in some instances can even make a market.

TIN
TIN CONCENTRATES
TANTALUM CONCENTRATES
TUNGSTEN ORE
MOLYBDENUM (MOLY)
BISMUTH
CADMIUM
COPPER CONCENTRATE
ZINC
LEAD

We also have the necessary contacts for such other items as teak, jade and gemstones.

Please let me know as soon as possible regarding availability. Information should include the following:

1. Commodity
2. Volume
3. Product description (e.g., mineral assay of ore content) only if available or offered
4. Location for independent inspection of entire lot (assay)
5. Schedule and availability for #4.

CONTINUUM Corporation

Sanctuary Centre
4800 North Federal Highway
Suite 304D
Boca Raton, FL 33431

407 338-7510
407 338-7513 TELEFAX



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UnitHealth America
CHARTER ISSUE

UniHealth Medical Centers Form New Regional Strategy

714 491-5200

Today even the most successful medical centers are facing unprecedented challenges as payor mix changes and competition heats up. One way to effectively respond to this environment is for hospitals to cluster together through a new configuration strategy now being developed by UniHealth America.

"In order to succeed, superior quality must be blended with a value-added approach and an obsessive desire to achieve a sustained competitive advantage," points out Richard Norling, UniHealth America's chief operating officer and President of UniHealth America Medical Centers. "Our enlarged base of quality facilities will enable UniHealth to dominate marketshare while attracting other pre-eminent facilities who want to be part of this exciting new era of healthcare delivery."

This division includes 10 acute care medical centers,



**Martin Luther Hospital
Medical Center
(Anaheim)**



**La Palma
Intercommunity
Hospital**

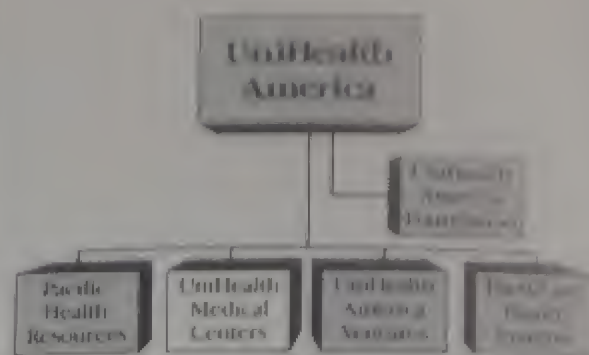


**Long Beach
Community Hospital**

**Santa Monica Hospital
Medical Center**



**California
Medical Center
Los Angeles**



one skilled nursing facility and three behavioral treatment centers: the LifePLUS Foundation and Treatment Centers of America.

The 10 acute care facilities in this company are:

- California Medical Center-Los Angeles
- La Palma Intercommunity Hospital (Orange County)
- Lindsay Hospital Medical Center (Central California)
- Long Beach Community Hospital
- * Martin Luther Hospital Medical Center (Anaheim)
- Meadowlands Hospital Medical Center (Secaucus, NJ)
- Northridge Hospital Medical Center
- Santa Monica Hospital Medical Center
- St. Luke's General Hospital (Bellingham, WA)
- Valley Hospital Medical Center (Van Nuys)

Golden Triangle Medical Center in Murrieta, CA is a 99-bed skilled nursing facility which opened in 1987 and an emerging medical campus.

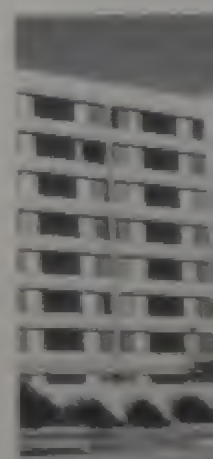
The three behavioral treatment centers are:

- Coldwater Canyon Hospital (North Hollywood)
- Pasadena Community Hospital
- (CCH and PCH are part of the LifePLUS Foundation)
- Treatment Centers of America (North Hollywood)

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(Van Nuys)**

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Part of UniHealth's unique strategy calls for many of these well-positioned medical centers to serve as the hub for a cluster of excellent multi-health care products and services within a given region. This will be particularly effective in the highly competitive Southern California marketplace where there are virtually no "retail" patients left and a hospital's financial future is often determined by its ability to provide an attractive case-managed package to payors, explains Norling. "Here, UniHealth America will have a decided competitive advantage by being able to provide a broad geographic coverage for a patient's healthcare needs."

In these clusters, the medical centers will link with other UniHealth America products and services to provide a full spectrum of healthcare delivery. Various UniHealth America Ventures' divisions, such as CliniShare USA, can provide both pre and post hospital technologies in areas of high-tech home health or dialysis. Programs can be cross marketed to patient/consumers already familiar with the organization through an affiliation with the hub medical center.

"Through these clusters, we anticipate taking market share from the competition, achieving high capacity and contributing significantly to our bottom line," says Norling. "The medical centers can succeed in this endeavor due to carefully orchestrated growth, risk sharing

and resource pooling," he adds. "But ultimately this enables each facility to be true to its mission—providing cost-effective, quality care to the community it serves."

One regional cluster has been formed by 345-bed Northridge Hospital Medical Center and 215-bed Valley Hospital Medical Center in the San Fernando Valley. A future "southern tier" cluster in the greater Los Angeles marketplace includes 200-bed Martin Luther Hospital Medical Center in Anaheim, 136-bed La Palma Intercommunity Hospital, and 300-bed Long Beach Community Hospital.

This cluster approach offers each facility advantages that are not readily available to the free standing hospital. Selected management teams at the facilities can be shared to take maximum advantage of expertise while avoiding duplication of efforts. Examples of this can already be found in the areas of public relations and risk contracting where regionalized staffs are focusing efforts on issues consistent with the new corporation's strategic business plan to market itself as a regional delivery system. (There will, of course, be no merging of medical staffs, although some physicians are already on the staff of more than one UniHealth hospital.)

This regionalization, as well as strong market dominance in Southern California, plays a pivotal role in the



Valley Hospital
Medical Center
(Van Nuys)



Pasadena Community
Hospital



Coldwater
Canyon Hospital
(North Hollywood)



Northridge Hospital
Medical Center

development of "branded products." UniHealth Medical Centers is exploring strategies to develop specific products that can be jointly offered and marketed either within a cluster or an entire region. For example, women's health care product lines could be packaged for contracting with payors as well as jointly marketed to the consumer and community at large, Norling points out.

Planned growth at the facilities is another important area of focus with projects recently completed or underway at four system hospitals. Operating at or near capacity, Northridge Hospital Medical Center has begun construction of a new 88-bed patient tower. Ground was also broken in early 1988 for a new eight-bed Women's Health Center at 97-bed Lindsay Hospital Medical Center, a rural facility in Central California, which opened a state-of-the-art ICU in 1987. During 1987, California Hospital opened its 344-bed replacement facility. This new nine-story building replaces the existing hospital structure constructed in 1926. Late in 1986, 367-bed Santa Monica Hospital opened the six-story Merle Norman Pavilion, which houses 107 patient beds, two-thirds of which are private rooms. Final work on the lobby area of this structure is currently underway.

"The strength of our medical centers can also be measured in the diversity and quality of our diagnostic and

treatment programs, many of which are well known in the medical and general community," says Norling. Some of the services include: The Western Center for Hyperbaric Medicine, The BirthPlace, Physician Finder, neonatal intensive care, rape treatment, Child abuse prevention and treatment center, SuperCare for Kids, the Daniel P. Loker Cancer Center, the Center on Cancer and Blood Diseases, the Southern California Heart Center, the Pacific Regional Spinal Cord Injury Center, the Sports Rehabilitation Center, the Woman's Health Care Center, the Neuro-Behavior Assessment Center and the Multiple Sclerosis Comprehensive Care Center.

"All in all, I believe our facilities are now well-positioned to face the challenges of today's health-care market. Their individual strengths combine to create a dynamic force in the industry as well as in their individual communities. They can play off their strengths and help one another to overcome obstacles," concludes Norling.

For more information on UniHealth Medical Centers, call Richard Norling at 818-716-2733. *Phone answered on 670 line by secretary*



**Golden Triangle
Medical Center
(Murrieta)**



**Meadowlands
Hospital
Medical Center
(New Jersey)**



**Lindsay Hospital
Medical Center**



**St. Luke's
General Hospital
(Washington)**

VertiHealth
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VertiHealth Maps Unique Strategy For UniHealth America



Heading the senior management team of VertiHealth, UniHealth America's innovative contracting division, are President William Caswell and Vice President Sherill Delahoussaye.

It's not business as usual for today's healthcare providers. The critical success factors for healthcare organizations in the future include adopting to the changing healthcare marketplace. And no one change is more dramatic than the way in which payors are approaching providers. Intense competition, volume discounts, negotiated rates and risk arrangements have re-defined the core of the healthcare industry. In this environment there will be winners and losers. VertiHealth has been developed with winning strategies in mind.

Bill Caswell, former senior vice president of California Hospital Medical Center-Los Angeles has been appointed President of VertiHealth. Sherill Delahoussaye of LHS Corp, has been named vice president for VertiHealth.

"UniHealth America's goal of significant market-share growth and eventual market dominance will become a reality due to VertiHealth's ability to offer integrated products and to manage risk-taking," Caswell says. VertiHealth will differentiate services and quality from the competition by offering a generic capitated delivery system to HMOs, PPOs, self-insured employers and other alternative delivery mechanisms.

"VertiHealth will function under a risk-sharing arrangement through pro-active intervention with its hospitals and physicians in 'case management.' The delivery system will share risk and offer special service type deals," he explains.

The case management services include identification of patients upon admission and active intervention with physicians to ensure that high quality lower cost alternatives are maximized.

This strategy enables VertiHealth to differentiate itself from competition, maximize profitability and manage

risk contracts in the most cost efficient manner, Caswell points out. VertiHealth will enable payor corporations and self-insured employers to offer a variety of VertiHealth products under their own private label.

The VertiHealth team will aggressively manage responsibilities in the following areas:

- ☐ Marketing and Sales
- ☐ Product Line, Program and Service Line Contracts
- ☐ PPO Relations
- ☐ Provider Recruitment
- ☐ Provider Relations
- ☐ Manage Capitated Contracts
- ☐ Pricing Strategies
- ☐ Contract Management, Review, Analysis, Negotiation and Compliance.

VertiHealth will give UniHealth America the opportunity to pursue "books of business" and channel business to UniHealth America medical centers and affiliates. "We will promote and sell regional products and services to a contracting provider—products and services that can enhance the provider's network. These might include home health or psychiatric services," Caswell points out.

Through VertiHealth's intensely focused efforts, the UniHealth America system benefits from new, larger contracts as well as the sale of regional products and services. "This system leveraging is key to the overall strategic plan of UniHealth America and VertiHealth is vital to achieving the goal of superior market performance," Caswell concludes.

For more information on VertiHealth, call Bill Caswell at 818-716-2748. ■ *Using number according to convenience person to phone*

Charlene S. Sorenson



CliniShare USA's roster of pre and post hospital technologies and services includes home health care, home I.V. therapy, home respiratory, mail order pharmacy, health products, private duty nursing, free-standing dialysis centers and SugarFree Centers for diabetics.

states. Launched in 1984, ElderMed America is one of the nation's largest and most highly regarded hospital-based senior membership programs. It addresses the healthcare and lifestyle needs of the 50 plus age group through a coordinated, well-integrated approach. And, ElderMed America is the first national senior membership network to offer a PPO Medicare Supplemental Program. Leading ElderMed America is Executive Vice President Roberta Suber.

Designed specifically to "niche market" the largest utilizers of healthcare services—the senior—ElderMed offers participating hospitals geographic exclusivity, vigorous joint marketing programs and a creative way to retain a preeminent position. Today, ElderMed America is continuing to look for well-positioned hospitals nationwide

who understand its time to "niche or be niched" and, therefore, desire to dominate the senior market in their community.

"Participating in ElderMed enables hospitals to quickly build a dynamic second generation membership program which bonds or "locks in" the senior population by creating a "one-stop shop" for members' healthcare and lifestyle needs," points out Crouch. "This bonding effect has been proven to significantly help hospitals increase marketshare and improve their bottom line performance," says Suber.

Membership, offered free to those over 50, provides personalized care coordination, free or discounted health education and screening programs and discounts at national chains and local retailers. Members also have access to

ElderMed's low-cost Mail Order Pharmacy (offered through a joint venture with CliniShare), and a variety of other healthcare and lifestyle products, including insurance programs.

Membership keeps growing and by year end it is estimated that more than 400,000 people nationwide will benefit from ElderMed America's services and programs.

In addition to ElderMed America, the ElderMed Institute was founded in late 1987 to provide a nationally respected source for excellence in healthcare research, training and education to individuals, corporate America, labor, health institutions, community organizations and educational centers. Under the leadership of Executive Director Virginia Lee Boyack, Ph.D., the Institute will explore opportunities to form partnerships with the public and private sectors to help a maturing population.

CliniShare USA is a critical link in UniHealth America's risk-driven managed care continuum through its ability to render services in the most cost-efficient setting possible. National In-Home Health Services, formerly of LHS Corp, has merged into this division. Jack Schlosser is Executive Vice President/CEO of CliniShare USA.

"Explosive advances in technology, combined with increased cost consciousness, have made quality healthcare possible in outpatient, freestanding and home care environments a viable alternative to both patients and payors," says Schlosser. CliniShare offers a wide range of pre and post hospital technologies including: Home Health, Private Duty Home Care, Home I.V. Therapy, Direct Rx Mail Order Pharmacy, Health Care Products and Services, Home Respiratory Services, Mobile Diagnostics, six free-standing Dialysis Centers and four SugarFree Centers.

Acquired in late 1986, the SugarFree Centers is one of the nation's leading distributors of diabetes related products, foods and services nationwide through four Southern California centers and mail order to more than 85,000 people.

"The UniHealth America Ventures subsidiary offers dramatic evidence of UniHealth America's drive to become a fully integrated, diverse healthcare delivery system which targets long-term growth as a benchmark for success," says Crouch.

For more information on any of these divisions, please call Layton Crouch at 818-716-2734. ■



Over 250,000 seniors nationwide are participants in ElderMed America's unique membership program. Sixty hospitals in 21 states offer ElderMed America as a way to dominate the senior marketplace in their community.



CareAmerica Health Plans is licensed in five counties in Southern California and has seen membership grow through the introduction of market-responsive HMO and PPO products.

PacifiCare Meets For A Multi-health Benefits Company

"H" healthcare. This well-known name has become synonymous with a publicly held subsidiary—UniHealth America, which went public in 1987. UniHealth America holds a 50% interest in five states: Secure Horizon and PHS Spectra which have been converted into products and a PPO into Pacific Review Services, a company and Lifeline, a chemical dependency product.

PacifiCare is one of UniHealth America's second year of operation.

*A prototype for
regionally
integrated
continuum of
merged care and
financing*

A FOCUSED vision. A focused mission. A focused dream. It takes that and more to bring two organizations together and forge a commitment so strong that the combination of willpower, energy and vigor can change an industry which yields most painfully to change. Yet UniHealth's vision is that deep, its expectations so immense and its aspirations so focused that today, two years after inception, our nonprofit network stands on the threshold of great accomplishment.

But the odyssey to this exciting new frontier has not been without challenge.

First was the need for financial stabilization. In June of 1988, as one of healthcare's largest nonprofit mergers was taking fold, both LHS Corp and the HealthWear Foundation were experiencing first-time-ever downward trends in financial performance. The dream of the future would be useless unless this challenge of the present was immediately addressed. And addressed it was.

Proactive interventions by UniHealth America leadership, combined with hereulean "stretch efforts" put forth by the 12,000 employees, medical staff members, board members and volunteers altered the negative financial course. The result was a dramatic turnaround and financial equilibrium. Most noteworthy was the \$200 million tax-exempt bond issuance on behalf of UniHealth and several of its tax-exempt affiliates offered by the California Health Facilities Financing Authority. The funding was the single largest and most complex ever undertaken by the CHFFA. By entering the market at precisely the right time to afford UniHealth advantageous financing terms and interest rates, UniHealth was able to recognize substantial annual savings and is moving forward - building a national prototype for regionally integrated continuums of healthcare delivery and financing.

In 1989 UniHealth also attained two other financial milestones which are critical barometers for the decade which awaits: quadrupling its cash position and the receipt of a \$30 million line of revolving credit to be used for a variety of growth activities taking place within the network.

The second challenge confronting UniHealth was the need for strategic realignment of the network's service line portfolio in a manner consistent with its vision and its primary, nonprofit values of care and compassion. Here we blended prudent business sense with good old-fashioned common sense in building an architecture for the future.

As a result, new clinical service lines emerged, judicious capital improvements commenced, "put" gave way to "team", product differentiation began to unfold, a new and aggressive commitment to quality became a centerpiece and the healthcare

Samuel J.
Samuel J.
Chairman of

industry, business communities and consumer public all began to take notice. Indeed, something different and exciting was taking place in a turbulent healthcare environment.

As part of this realignment, UniHealth divested three of its properties while inaugurating an Affiliates Program which allows for a deepening of the organization's vast pool of resources while broadening its critical mass in the vast Southern California marketplace. With these fundamentals now firmly in place, UniHealth is indeed entering its "years of renewal" and its "decade of excellence."

The 1980s witnessed more change in the way healthcare is delivered and financed than any other period which came before. All that we knew as "safe" was suddenly being questioned. The new issues included access to care; payment for healthcare; the changing view toward hospitals as "cost centers;" increased demand for outpatient and home-care services; the uncanny growth of DRGs, PPOs and HMOs and, most significantly, the emergence of strong, regional multi-healthcare systems such as UniHealth America.

What did not change, however, is our commitment to those we serve. That's why we've made "A Commitment to Caring" our mission. To all members of Team UniHealth, these words permeate all that we do and are the reason we are here as quality care becomes our touchstone in the 1990s. Through a coordinated program we call QUEST (Quality Utilizing Excellence, Service and Teamwork) UniHealth is establishing quantifiable standards of quality and service which will differentiate us in the marketplace. With our fully integrated healthcare system, those in need will seek out UniHealth — our medical centers, service lines, and physicians — for all of their families' healthcare needs, because of a quality standard which is unquestioned.

That is our goal. Our commitment. Our promise to you.



Samuel J. Tibbitts

Samuel J. Tibbitts
Chairman of the Board

Paul A. Teslow

Paul A. Teslow
President and Chief Executive Officer

*Creating
performance
potential to
survive and
thrive in a
changing
healthcare
environment*

Creation

WHEN WORD came on June 6, 1988 that LHS Corp and the HealthWest Foundation had joined forces to create UniHealth America, the question wasn't why this merger had occurred, but rather why it didn't happen sooner. But great events are often mirrors of their times, so perhaps it took the turbulence experienced by the healthcare industry to move to this logical point.

LHS Corp and the HealthWest Foundation, with over 100 combined years of service and commitment to their communities, shared amazingly similar histories, business plans and philosophies. Each had roots as non-profit community hospitals which later engineered a corporate reorganization to create parent companies. Each then developed into multi-hospital systems and later multi-healthcare systems through the development of home health care agencies, senior membership programs and health maintenance organizations. Each considered quality its number one agenda and had a similar vision to creatively merge financing and delivery into one vertically integrated corporation.

This merger of equals was one of the largest consolidations ever to take place in the healthcare industry. It created one of the largest nonprofit systems in the country with perhaps the largest concentration of resources under one umbrella found in any single



regional
marketplace.
More impor-
tantly, the
joining of two
organizations
with compa-
rable mission,
size and

diversification provided the opportunity for achieving pivotal advantages that neither could have attained alone.